TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1902.

No. 240.

THE DELAWARE INDIANS RESIDING IN THE CHEROKEE NATION ET AL., APPELLANTS,

vs.

THE CHEROKEE NATION.

APPEAL FROM THE COURT OF CLAIMS.

FILED MARCH 19, 1903.

(18,871.)

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I.—*Petition.*

Filed August 4, 1898.

Court of Claims.

THE DELAWARE INDIANS RESIDING IN the Cherokee Nation, as a Tribe and Individually; George Bullette, Henry Armstrong, John H. Secondyne, John Young, John Sarcoxie, Jr., Individual Delaware Indians Residing in the Cherokee Nation and the Business Committee of Such Delaware Indians; John Bullette and Richard C. Adams, Individual Delaware Indians Residing in said Cherokee Nation and the Representatives of said Delaware Indians and said Business Committee, Suing on Behalf of Themselves and All Other Delaware Indians Now or Lately Residing in said Cherokee Nation and the Children, Descendants, Heirs-at-law, and Personal Representatives of All the Deceased Delaware Indians Whose Names Appear upon the Register of Delaware Indians Made in February, 1867, by John G. Pratt, the United States Indian Agent for the Delaware Indians and on File in the Department of the Interior of the United States and Known as the "Delaware Register," Plaintiffs,

against

THE CHEROKEE NATION, Defendants.

In Equity. No. 21139.

To the honorable the Court of Claims of the United States:

The petition of the above named plaintiffs, suing as aforesaid, respectfully shows to this court:

2 First. That in and by an act of Congress approved June 28, 1898, and entitled "An act for the protection of the people of the Indian Territory and for other purposes," the Delaware Indians residing in the Cherokee nation were authorized and empowered to bring suit in the Court of Claims of the United States within sixty days after the passage of said act against the Cherokee nation for the purpose of determining the rights of said Delaware Indians in and to the lands and funds of said nation under their contract and agreement with the Cherokee nation, dated April 8, 1867.

This suit is brought in pursuance of the authority of the said act.

Second. That a treaty was made at the city of Washington in the District of Columbia on the 19th day of July, in the year of our Lord one thousand eight hundred and sixty-six, by and between Dennis N. Cooley and Elijah Sells, commissioners on the part of the United States, and Smith Christy, White Catcher, James McDaniel, S. H. Benge, Daniel H. Ross and J. B. Jones, delegates of the Cherokee nation appointed by resolution of the national council on the part of said Cherokee nation, and the Senate of the United States did, on the 27th day of July, advise and consent to the ratification of the said treaty with certain amendments thereto, which said amendments were accepted by the said Cherokee nation on the 31st day of July, 1866, and which said treaty so amended was signed by the President of the United States and the seal of the United States affixed thereto on the 11th day of August, 1866, and thereupon the same became binding and effective.

That the fifteenth article of said treaty is as follows:

"The United States may settle any civilized Indians, friendly with the Cherokees and adjacent tribes, within the Cherokee country, on unoccupied lands east of the 96° on such terms as may be agreed upon by any such tribe and the Cherokees, subject to the approval of the President of the United States, which shall be consistent with the following provisions, viz:

Should any such tribe or band of Indians settling in said country abandon their tribal organization, there being first paid into the Cherokee national fund a sum of money which shall sustain the same proportion to the then existing national fund that the number of Indians sustain to the whole number of Cherokees then residing in the Cherokee country, they shall be incorporated into and ever after remain a part of the Cherokee nation, on equal terms in every respect with native citizens.

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And should any such tribe, thus settling in said country, decide to preserve their tribal organizations, and to maintain their tribal laws, customs, and usages, not inconsistent with the constitution and laws of the Cherokee nation, they shall have a district of country set off for their use by metes and bounds equal to 160 acres, if they should so decide, for each man, woman and child of said tribe, and shall pay for the same into the national fund such price as may be agreed on by them and the Cherooke nation, subject to the approval of the President of the United States, and in case of disagreement the price to be fixed by the President.

And the said tribe thus settled shall also pay into the national fund a sum of money, to be agreed on by the respective parties, not greater in proportion to the whole existing national fund and the probable proceeds of the lands herein ceded or authorized to be ceded or sold than their numbers bear to the whole number of Cherokees then residing in said county, and thence afterwards they shall enjoy all the rights of native Cherokees.

But no Indians who have no tribal organizations, or who shall

determine to abandon their tribal organization, shall be permitted to settle east of the 96° of longitude without the consent of the Cherokee national council, or of a delegation duly appointed by it, being first obtained. And no Indians who have and determine to preserve their tribal organizations shall be permitted to settle, as herein provided, east of the 96° of longitude without such consent being first obtained, unless the President of the United States, after a full hearing of the objections offered by said council or delegation to such a settlement, shall determine that the objections are insufficient, in which case he may authorize the settlement of such tribe east of the 96° of longitude.

Third. That a treaty between the United States and the Delaware tribe of Indians was concluded July 4, 1866, ratified by a Senate of the United States, July 26, 1866, and proclaimed by the President of the United States, August 10, 1866, of which articles 4 and 5 are as follows:

"Article 4. The United States agree to sell to the said Delaware Indians a tract of land ceded to the Government by the Choctaws and Chickasaws, the Creeks or the Seminoles, or which may be ceded by the Cherokees in the Indian country to be selected by the Delawares in one body, in as compact a form as practicable, so as to contain timber, water and agricultural lands, to contain in the aggregate, if the said Delaware Indians shall so desire, a quantity equal to one hundred and sixty (160) acres for each man, woman and child who shall remove to said country, at the price per acre paid by the United States for the said lands, to be paid for by the Delawares out of the proceeds of sale, of lands in Kansas heretofore provided for. The said tract of country shall be set off with clearly and permanently marked boundaries by the United States; and also surveyed as public lands are surveyed, when the Delaware council shall so request, when the same may in whole or in part, be allotted by said council to each member of said tribe residing in said county, said allotment being subject to the approval of the Secretary of the Interior."

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"Article 5. The United States guarantee to the said Delawares peaceable possession of their new home herein provided to be selected for them in the Indian country, and protection from hostile Indians and internal strife and civil war, and a full and just participation in any general council or territorial government that may be established for the nations and tribes residing in said Indian country.

Fourth. That on the 8th day of April, 1867, articles of agreement were made between the Cherokee nation represented by William P. Ross, principal chief, Riley Keyes and Jesse Bushyhead, delegates duly authorized, as parties of the first part, and the Delaware tribe of Indians represented by John Connor, principal chief, Charles Journeycake, assistant chief, Isaac Journeycake and John Sarcoxie, delegates for and on behalf of the said Delaware tribe duly authorized, which said agreement was approved by the President of the United States April 11th, 1867, and is as follows:

"Articles of agreement made this 8th day of April, A. D. 1867, between the Cherokee nation, represented by William P. Ross, principal chief, Riley Keyes, and Jesse Bushyhead, delegates duly authorized, parties of the first part, and the Delaware tribe of Indians, represented by John Connor, principal chief; Charles Journeycake, assistant chief; Isaac Journeycake and John Sarcoxie, delegates for and on behalf of said Delaware tribe, duly authorized, witnesseth:

Whereas by the fifteenth article of a certain treaty between the United States and Cherokee nation, ratified August 11, 1866, certain terms were provided, under which friendly Indians might be settled upon unoccupied lands in the Cherokee country east of the line of 96° of west longitude, the price to be paid for such lands to be agreed on by the Indians to be thus located and the Cherokee nation, subject to the approval of the President of the United States; and whereas by a treaty between the United States and the Delaware tribe of Indians, ratified August 10, 1866, the removal of the said Delawares to the Indian country south of Kansas was provided for; and, in the fourth article whereof, an agreement was made by the United States to sell to the Delawares a tract of land, being part of a tract the cession of which by the Cherokees to the United States was then contemplated; and whereas no such cession of land was made by the Cherokees to the United States, but, in lieu thereof, terms were provided, as hereinbefore mentioned, under which friendly Indians might be settled upon their lands; and whereas, a full and free conference has been had between the representatives of the Cherokees and the Delawares, in view of the treaties herein referred to, looking to a location of the Delawares upon the Cherokee lands, and their consolidation with said Cherokee nation.

Now, therefore, it is agreed between the parties hereto, subject to the approval of the President of the United States, as follows:

The Cherokees, parties of the first part, for and in consideration of certain payments and the fulfillment of certain conditions hereinafter mentioned, agree to sell to the Delawares for their occupancy, a quantity of land east of the line of the 96° west longitude, in the aggregate equal to one hundred and sixty acres for each individual of the Delaware tribe, who has been enrolled upon a certain register made February 18, 1867, by the Delaware agent, and on file in the Office of Indian Affairs, being the list of Delawares who elect to remove to the 'Indian country,' to which list may be added, only with the consent of the Delaware council, the names of such other Delawares as may, within one month after signing of this agreement, desire to be added, thereto, and the selections of the lands to be purchased by the Delawares may be made by said Delawares in any part of the Cherokee reservation east of said line 96° not already selected and in possession of other parties, and in case the Cherokee lands shall hereafter be allotted among the members of said nation, it is agreed that the aggregate amount of land herein provided for

the Delawares, to include their improvements according to the legal subdivisions when surveys are made (that is to say, one hundred and sixty acres for each individual), shall be guaranteed to each Delaware incorporated by these articles into the Cherokee nation, nor shall the continued ownership and occupancy of said land by any Delaware so registered be interfered with in any manner whatever without his consent, but shall be subject to the same conditions and restrictions as are by the laws of the Cherokee nation imposed upon native citizens thereof.

Provided that nothing herein shall confer the right to alienate, convey, or dispose of any such lands except in accordance with the constitution and laws of said Cherokee nation.

And the said Delawares, parties of the second part, agree that there shall be paid to the said Cherokees from the Delaware funds now held or hereafter received by the United States, a sum of money equal to one dollar per acre for the whole amount of one hundred and sixty acres of land for every individual Delaware who has already been registered upon the aforesaid list, made February 18, 1867, with the additions thereto heretofore provided for.

And the Secretary of the Interior is authorized and *re*requested to sell any United States stocks belonging to the Delawares to procure funds necessary to pay for said lands; but in case he shall not feel authorized, under existing treaties, to sell such bonds belonging to the Delawares, it is agreed that he may transfer such United States bonds to the Cherokee nation, at their market value, at the date of such transfer.

And the said Delawares further agree, that there shall be paid from their funds now or hereafter to come into possession of the United States a sum of money which shall sustain the same proportion to the existing Cherokee national fund that the number of Delawares registered as above mentioned and removing to the Indian country sustains to the whole number of Cherokees residing in the Cherokee nation. And for the purpose of ascertaining such relative numbers, the registers of the Delawares herein referred to, with such additions as may be made within one month from the signing of this agreement, shall be the basis of calculation as to the Delawares, and an accurate census of the Cherokees residing in the Cherokee nation shall be taken under the laws of that nation within four months, and properly certified copies thereof, filed in the Office of Indian Affairs, which shall be the basis of calculation as to the Cherokees.

And that there may be no doubt hereafter as to the amount to be contributed to the Cherokee national fund by the Delawares, it is hereby agreed by the parties hereto that the whole amount of the invested funds of the Cherokees, after deducting all just claims thereon, is $678,000.

And the Delawares further agree, that in calculating the total amount of said national fund there shall be added to the said sum of $678,000 the sum of $1,000,000, being the estimated value of the

Cherokee neutral lands in Kansas, thus making the whole
7 Cherokee national fund $1,678,000; and this last mentioned sum shall be taken as the basis for calculating the amount which the Delawares are to pay into the common fund.

Provided, that as the $678,000 of funds now on hand belonging to the Cherokees is chiefly composed of stocks of different values, the Secretary of the Interior may transfer from the Delawares to the Cherokees a proper proportion of the stocks now owned by the Delawares of like grade and value, which transfer shall be in part of the *pro rata* contribution herein provided for by the Delawares to the funds of the Cherokee nation; but the balance of the *pro rata* contribution by the Delawares to said fund shall be in cash or United States bonds, at their market value.

All cash, and all proceeds of stocks, whenever the same may fall due or be sold, received by the Cherokees from the Delawares under the agreement, shall be invested and applied in accordance with the 23d article of the treaty with the Cherokees of August 11, 1866.

On the fulfillment by the Delawares of the foregoing stipulations, all the members of the tribe registered as above provided, shall become members of the Cherokee nation, with the same rights and immunities, and the same participation (and no other) in the national funds, as native Cherokees, save as hereinbefore provided.

And the children hereafter born of such Delawares so incorporated into the Cherokee nation, shall, in all respects, be regarded as native Cherokees.

WILL P. ROSS, *Principal Chief*,
RILEY KEYES,
Cherokee Delegation.

his
JOHN x CONNOR,
mark.
Principal Chief,
CHARLES JOURNEYCAKE,
ISAAC JOURNEYCAKE,

his
JOHN x SARCOXIE.
mark.
Delaware Delegation.

Executed and delivered in our possession by the above named delegates of the Cherokee and Delaware nations, at the city of Washington, in the District of Columbia, the day and year first above written.

JOHN G. PRATT.
W. A. PHILLIPS.
EDWARD S. MENAGETH.

8 DEPARTMENT OF THE INTERIOR, *April* 11, 1867.

The within agreement between the Cherokee and Delaware tribes of Indians concluded on the 8th instant, and providing for uniting

the two tribes as contemplated by the Cherokee treaty of July 19, 1866, is respectfully submitted to the President, with the recommendation that it be approved.

O. H. BROWNING, *Secretary.*

Approved April 11, 1867.

ANDREW JOHNSON."

Fifth. That at the date of the making and approval of the last mentioned agreement, there were 985 individuals of the Delaware tribe who had been enrolled upon the register referred to in the agreement last hereinbefore set forth, being the list of Delawares who elect to remove to the "Indian country," including the names of other Delawares added with the consent of the Delaware council within one month after signing of the said agreement and those desiring to be added thereto as provided in the said agreement.

212 of the said 985 individuals of the Delaware tribe enrolled as aforesaid are now living and residing in the Cherokee nation and are among the parties-plaintiff herein. The individual plaintiffs, George Bullette, Henry Armstrong, John H. Secondyne, John Young, John Sarcoxie, Jr., John Bullette and Richard C. Adams were among the 985 individuals of the Delaware tribe enrolled as aforesaid and are among the said 212 of the same who are now living and residing in the Cherokee nation.

773 of the 985 individuals of the Delaware tribe registered as hereinbefore set forth have died since the making and approval of said agreement, leaving children descendants, heirs at law and personal representatives now residing in said Cherokee nation. Such children, descendants, heirs at law and personal representatives are also parties plaintiff herein. The individual plaintiffs hereinbefore mentioned are among the children, descendants, heirs at law and personal representatives of such deceased individual Delawares.

The question in controversy herein is one of common and general interest to all of such living Delawares so registered as aforesaid and to the children, descendants, heirs at law and personal repre-
9 sentatives of such as are deceased as aforesaid. The said living individual Delawares so registered as aforesaid and the children, descendants, heirs at law and personal representatives of such deceased individual Delawares are very numerous and it is impracticable to bring them all before the court personally or by name or to name them in the title to this action. They are, therefore, described generally in the said title as "The Delaware Indians residing in the Cherokee nation," and the individual plaintiffs above named sue not only on behalf of themselves, but on behalf of all such other individual living Delaware Indians and such other children, descendants, heirs at law and personal representatives of such deceased individual Delaware Indians. They pray that if it become necessary in the progress of this suit the names of such individual living Delawares and of such children, descendants, heirs at law and personal representatives of such deceased Delawares may be inserted in the title of this action as parties-plaintiff herein.

Sixth. That the number of acres or land—being 160 acres for each individual of the Delaware tribe enrolled as aforesaid—sold, or agreed to be sold, by the said Cherokees to the said Delawares under and by virtue of the said agreement, was in the aggregate 157,600 acres.

The said Delawares, parties of the second part in said agreement, thereupon paid or caused to be paid to the said Cherokees from the Delaware funds then held or thereafter received by the United States the sum of $157,600, the agreed purchase price for said land and being $1.00 per acre for the said 157,600 acres, which said payment was made for and as the said agreed purchase price for the said lands.

Seventh. That at the time of the making and approval of the said agreement, the whole number of Cherokees residing in the Cherokee nation was 13,573.

That the said Delawares further paid to the said Cherokees and contributed to the Cherokee national fund from the funds of the said Delawares then in possession of the United States, or which thereafter came into such possession, the sum of one hundred twenty-one thousand eight hundred twenty-four and 28–100 dollars ($121,824.28), being the sum which sustained the same proportion to the theretofore existing Cherokee national fund as established and defined in and by said agreement that the number of Delawares registered as above mentioned and moving into the Indian country as aforesaid sustained to the whole number of Cherokees residing in the Cherokee nation as aforesaid, and the said Delawares fully and in all respects complied with, fulfilled and performed all the conditions and stipulations of the said agreement on their part to be complied with, fulfilled and performed.

Eighth. That thereby and by virtue of the premises, the said Delawares became the equitable owners of, and entitled to select, possess, own and forever enjoy, 157,600 acres of land to be selected and segregated by them in accordance with the provisions of the said agreement.

And the said Delawares and their children thereafter born, and their descendants, also became entitled to share in the said Cherokee national fund so created by the union of the theretofore existing Cherokee national fund with the fund so contributed thereto by the Delawares, as aforesaid, and in the national lands of the Cherokee nation remaining after the segregation and separation therefrom of the 157,600 acres sold as aforesaid by the said Cherokees to the said Delawares in proportion that the number of the said Delawares registered as aforesaid, bore to the said Cherokees numbering as aforesaid, being in the ratio of (1) to thirteen and 78–100 (13 78–100).

That thereupon the said Delawares selected the said 157,600 acres of land from the said Cherokee reservation east of line 96°, not theretofore selected or in possession of other parties, entered into the occupancy and possession of the same and made extensive and

valuable improvements thereon, and they, their children, descendants, heirs at law and personal representatives have continued to occupy and possess the said lands and the said improvements and have continued to make extensive and valuable improvements thereon and to reside thereon down to the present time; all of which has been done with the knowledge and consent of the said Cherokees and the said Cherokee nation and at the suggestion, instance, desire and request of the said Cherokees and the said Cherokee nation.

That the said Delawares have not held their said lands in common or in community of possession, but in severalty and individually, each of the said Delawares occupying, cultivating and improving a special tract thereof of which he or she had for himself or herself the full and exclusive right and benefit, and they have so held them individually and in severalty from the time when they selected and segregated the same as aforesaid in accordance whith the provisions of the said agreement continually down to the present time; all of which has been done with the knowledge, assent and approval of the said Cherokees and the said Cherokee nation and of the Government of the United States.

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Ninth. That the said Delawares have not abandoned their tribal organization but have preserved the same and have maintained their tribal laws, customs and usages not inconsistent with the constitution and laws of the Cherokee nation and of the Government of the United States. The Government of the United States has held and kept invested for them a large trust fund in which neither the Cherokees nor the Cherokee nation have had or claimed any right or interest whatsoever, and from which payments of principal and income have been from time to time made by the said Government of the United States to or for or on behalf of the said Delawares. The said Delawares have always had and maintained tribal councils which have had charge of the general and united interests of the said Delawares and the moneys so paid out as aforesaid by the Government of the United States to and for and on behalf of said Delawares has been so paid out at the request of the said Delaware tribal council. The said Delawares, by the authority and through the agency of their said tribal council, have built school houses, churches and a pay house or tribal public building.

They have, during all this time since their removal to the Cherokee lands as aforesaid, maintained their relationship to the Cherokee nation as citizens thereof and to their own tribe and tribal council, being governed and controlled by the said tribal council in all matters not conflicting with the jurisdiction of the said Cherokee nation and of the Government of the United States.

Their tribal name by which they are known and designated is "the Delaware Indians residing in the Cherokee nation." As such tribe and as individuals, they are recognized in the act of Congress approved June 28, 1898, and entitled "And act *of* the protection of the people of the Indian Territory and for other purposes" hereinbefore referred to and hereinafter more particularly set forth and

they are authorized by such act to bring this suit and the
12 tribe whose name is set forth in the title of this action as "the Delaware Indians residing in the Cherokee nation" is such tribe. The individual plaintiffs, George Bullette, Henry Armstrong, John H. Secondyne, John Young, and John Sarcoxie, Jr., are a business committee elected at the suggestion and request of the Interior Department of the United States, at and by such tribal council and have charge of the business interests of the said Delaware Indians and the said tribe.

There are now 920 Delawares residing in the Cherokee nation constituting such Delaware tribe and maintaining such tribal organization and acting by and through the agency of their tribal council and the said business committee elected thereby as aforesaid. Such tribal council and such business committee have authorized and directed the bringing of this suit and the same is instituted by, through and under their directions as well as by, through and under the directions of the individual Delawares, interested in this controversy as aforesaid.

At the time of the making and consummation of the agreement between the Delawares and the Cherokees hereinbefore set forth, it was the general policy of the Government of the United States to allow the various Indian tribes and nations to live under governments and laws of their own and in all matters not affecting the paramount sovereignty of the United States such Indian tribes or nations were allowed to govern themselves and manage their own affairs.

Recently, however, the Indians and the Indian tribes have been brought under the general laws of the United States and the special tribal laws and tribunals have been abolished.

Tenth. The twenty-fifth section of the act of Congress above mentioned, approved June 28, 1898, and entitled "An act for the protection of the people of the Indian Territory and for other purposes," is as follows:

"SEC. 25. That before any allotment shall be made of lands in the Cherokee nation, there shall be segregated therefrom by the commission heretofore mentioned, in separate allotments or otherwise, the one hundred and fifty-seven thousand six hundred acres purchased by the Delaware tribe of Indians from the Cherokee nation under agreement of April eighth, eighteen hundred and sixty-seven,
subject to the judicial determination of the rights of said de-
13 scendants and the Cherokee nation under said agreement. That the Delaware Indians residing in the Cherokee nation are hereby authorized and empowered to bring suit in the Court of Claims of the United States, within sixty days after the passage of this act, against the Cherokee nation, for the purpose of determining the rights of said Delaware Indians in and to the lands and funds of said nation under their contract and agreement with the Cherokee nation dated April eighth, eighteen hundred and sixty-seven; or the Cherokee nation may bring a like suit against said Delaware Indians; and jurisdiction is conferred on said court to adjudicate and fully

determine the same, with right of appeal to either party to the Supreme Court of the United States."

Eleventh. By reason of the premises and of the contracts, agreements, sales, purchases and payments aforesaid, and of the acts of Congress hereinbefore mentioned and referred to, the said Delaware Indians are legally and equitably entitled to the said 157,600 acres of land bought and paid for by them as aforesaid and which they have selected and segregated from the other lands of the Cherokee nation as aforesaid, in pursuance of the provisions of the said agreement between the said Delawares and said Cherokees hereinbefore set forth.

The said Delaware Indians are also entitled to share with the Cherokees *pro rata* in the division about to be made under the provisions of said act of Congress, and of other acts of Congress previous thereto of the other Cherokee national lands and of the Cherokee national funds.

The said Cherokees and the said Cherokee nation, without any just or sufficient reason therefore, deny in whole or in part the rights of the said Delawares in the premises as above set forth.

Under and by virtue of the said act of Congress approved June 28, 1898, as aforesaid, and other acts of Congress, the national lands and funds of the said Cherokee nation are now about to be distributed to the members of the said nation, and to the persons entitled to receive the same in severalty and it is necessary that the questions in dispute between your petitioners, the said Delawares and the Cherokee nation and the members thereof other than the said Delawares, shall be adjudicated and determined in order that said lands and funds may be lawfully and properly divided and in order that those persons may receive the same who are lawfully entitled thereto.

In and by the twenty-fifth section of the said act of Con-
14 gress, approved June 28, 1898, jurisdiction has been conferred upon this court to hear and determine such disputes and this suit is brought for the purpose of securing such adjudication and determination.

Twelfth. Since the making and approval of the said agreement between the Cherokees and Delawares as aforesaid, the said Cherokee nation, without right, authority or jurisdiction, has assumed and essayed to increase the number of said Cherokees and to admit other persons, not Cherokees and not entitled thereto, to share in the lands and funds of the said Cherokee nation, and in this way to cut down and diminish the share which the said Delawares are entitled to have and receive in such communal funds and lands of the Cherokee nation and for which the said Delawares paid their money as aforesaid.

The said Cherokee nation now, wrongfully and without any just cause or reason therefor, claims that the said persons whom they have assumed and essayed, without right or authority to admit to a share in the rights of said Cherokees and of the citizens of said

Cherokee nation, are entitled so to share in the division and allotment of the Cherokee national lands and funds.

The said Delawares deny the same.

Your petitioners are unable to state the exact number of individuals whom the said Cherokee nation has without right or authority as aforesaid pretended to admit to share in the rights aforesaid but the number is very large—many thousands as your petitioners believe—and your petitioners ask that it be determined and adjudged in this action who, and how many the persons are who are of right entitled to share in the said communal lands and funds of the said Cherokee nation and what proportion thereof your petitioners, the said Delawares, are entitled to receive.

Thirteenth. That a partial division has already heretofore been made of the said funds of the said Cherokee nation and many persons not entitled thereto as aforesaid have been permitted by the said Cherokee nation to share in such division.

Not only did the said Cherokee nation, as a body and in its corporate capacity, wrongfully and without right or authority consent to the sharing in said funds by persons not entitled to share therein, but many individual Cherokees—some of them holding high official positions in said tribe or nation—have consented to, and participated in, the paying over of such funds to such individuals not entitled thereto although they knew that said persons so sharing in said funds and to whom said funds were so paid over as aforesaid, were not entitled thereto. Your petitioners, the said Delawares have thereby been greatly injured and damaged and their individual shares much diminished.

Your petitioners, the said Delawares, are unable to state just how much money has been so wrongfully paid out, distributed and shared in by persons not entitled to receive the same, but they pray that an accounting may be had of such moneys paid over and distributed as aforesaid, and that none of such moneys so improperly and wrongfully paid over, distributed and shared in to and by persons not entitled to receive the same may be charged up against the shares of the said Delawares, but that the loss occasioned by such improper payments and distributions may be borne by the members of the said Cherokee nation other than said Delawares or by the individual Cherokees so wrongfully consenting thereto and participating therein as aforesaid, and that the said Delawares may all receive the part or share of such lands and funds which they would have received if it had not been for such unlawful and improper payments and distributions.

Fourteenth. The said Cherokee nation has also improperly and without right or authority used its communal funds, and expended the same wastefully and lavishly to prevent the Delawares from receiving their just and proper share in the said Cherokee national funds and lands as aforesaid.

Your petitioners are unable to state the exact amount which the said Cherokees have so improperly used and expended in so preventing as aforesaid, the said Delawares from receiving their proper

part and share in said Cherokee national lands and funds, but they pray that an accounting may be had of such moneys so unlawfully, wastefully and lavishly expended, and that no part of the same shall be charged against the shares of the said Delawares, but that the whole thereof shall be charged against the shares of the said Cherokees or the members of the said Cherokee nation other than the said Delawares, and that the Delawares may receive the same part, share and proportion of said lands and funds that they
16 would have received if such unlawful, wasteful and lavish payments and expenses had not been made and incurred.

Fifteenth. The said Cherokees have made many other wasteful, lavish and unlawful expenditures of their national funds and have wastefully and lavishly paid out and expended the same without any right or authority for purposes other than proper public and national purposes, and the said Delawares have derived no benefit or advantage therefrom, but the amount coming to them upon the distribution of such funds has been thereby decreased and diminished.

Your petitioners are unable to state just how much the amount of such unlawful, lavish and improper expenditures has been, but they allege on information and belief that the same has amounted to more than five hundred thousand dollars ($500,000), and they pray that an accounting may be had of the moneys so paid out and expended by the said Cherokees from their national fund as aforesaid, and that no part of such unlawful and improper expenditures may be charged against the said Delawares, but that the whole thereof shall be charged against the said Cherokees or the members of the Cherokee nation, other than the said Delawares or against the persons who have consented thereto or participated therein, and that the said Delawares may receive such portion of such national fund as they would have received if such unlawful and improper expenditures had not been made.

Sixteenth. That in addition to the funds now in hand in the said Cherokee national fund, the said Cherokee nation has claims against the United States Government, and other claims, which, if recovered, would belong to said Cherokee national fund and in which your petitioners, the said Delawares, will be entitled to share, and they also have sources of income and revenue from the lease of lands, railroad privileges, town sites and otherwise, in all of which the said Delawares are entitled to share as aforesaid.

Wherefore, your petitioners demand judgment against the said Cherokee nation as follows:

1. That the rights of your petitioners, the said Delaware Indians, as a tribe and individually, in and to the lands and funds of the said Cherokee nation under their contract and agreement
17 with the said Cherokee nation, dated April 8, 1867, and hereinbefore set forth, may be fully determined, defined and adjudicated by this court.

2. That this court shall determine and adjudge that the said Delaware Indians are entitled to the 157,600 acres of land purchased

and paid for by them by virtue, and in pursuance of the agreement hereinbefore set forth between the said Cherokees and the said Delawares, dated April 8, 1867, and thereafter selected by them as aforesaid, and to own and hold the same in fee simple to them and to their heirs and assigns forever.

3. That it be adjudged and decreed that it is the right and duty of the said Cherokee nation to convey, by a good and sufficient deed with apt words to vest the grantee with a perfect and indefeasible estate in fee simple, to the said Delaware Indians residing in the Cherokee nation the said 157,600 acres of land so sold by the said Cherokee nation to the said Delaware Indians as aforesaid, and so paid for as aforesaid by the said Delaware Indians to the said Cherokee nation and so selected by the said Delaware Indians in accordance with the provisions of the said contract of sale hereinbefore set forth.

That said conveyance be made to such of the 985 Delaware Indians whose names are contained upon the register aforesaid as are now living and to the heirs at law of such as are since deceased.

4. That this court shall determine and adjudge that the said Delaware Indians are entitled to share in the remaining lands of the Cherokee nation other than the 157,600 acres purchased and paid for by the said Delawares as aforesaid, and in the Cherokee national fund, equally with every individual lawfully and properly belonging to said Cherokee nation, and that none but such persons lawfully and properly belonging to such Cherokee nation are entitled to share in such division of such lands and funds, and that this court shall determine and adjudge how many and what individuals are entitled to share in such division and how large a proportion of such lands and funds shall be allotted and paid over to your petitioners, the said Delawares.

5. That the said Cherokee nation shall account for the said national fund of said Cherokees and for all expenditures that
18 have been made therefrom, and that this court shall determine how much such fund does or should amount to, and, if it shall be found that payments have been made therefrom improperly or to persons not entitled to receive the same or to share therein that such payments shall be disallowed, and that no part thereof shall be charged against the shares of the said Delawares but that the whole thereof shall be charged against the members of the said Cherokee nation other than the said Delawares and that the said Delawares shall receive the same amount, share and proportion thereof that they would have received had no payments been unlawfully or improperly made therefrom.

6. That this court shall adjudicate and determine that the said Delawares are entitled to receive the same share and proportion in any amounts hereafter recovered or received by the said Cherokee nation or for, or for the benefit of, said Cherokee national fund, from any source whatsoever, that they are now entitled to receive in and from the funds now in hand.

7. That your petitioners, the said Delaware Indians residing in

the Cherokee nation, both as a tribe and individually may have such other and further relief as to this court may seem just and proper and as they may show themselves entitled to in the premises, and may also have judgment for their taxable costs and disbursements herein.

WALTER S. LOGAN,
Attorney for Petitioners, 27 William St.,
Borough of Manhattan, New York City.

19 (U. S. int. rev. stamp 10c. cancelled.)

CITY, COUNTY, AND STATE OF NEW YORK, } ss:
Southern District of New York, }

On this second day of August, 1898; before me personally came and appeared Richard C. Adams, one of the plaintiffs or petitioners above named and one of the Delaware Indians residing in the Cherokee nation, who, being by me first duly sworn, deposed and said that the foregoing petition and the matters therein stated are true to the best of his knowledge, information and belief and that he believes that the facts as stated in said petition are true.

RICHARD C. ADAMS.

Sworn to before me this 2nd day of August, 1898.

[SEAL.] MYRA B. MARTIN,
Notary Public, 168, City and County of New York.

20&21 Court of Claims.

THE DELAWARE INDIANS RESIDING IN THE CHEROKEE Nation, as a Tribe and Individually; George Bullette, Henry Armstrong, John H. Secondyne, John Young, John Sarcoxie, Jr., Individual Delaware Indians Residing in the Cherokee Nation and the Business Committee of Such Delaware Indians; John Bullette and Richard C. Adams, Individual Delaware Indians Residing in said Cherokee Nation and the Representatives of said Delaware Indians and said Business Committee, Suing on Behalf of Themselves and All Other Delaware Indians Now or Lately Residing in said Cherokee Nation and the Children, Descendants, Heirs-at-law, and Personal Representatives of All the Deceased Delaware Indians Whose Names Appear upon the Register of Delaware Indians Made in February, 1867, by John G. Pratt, the United States Indian Agent for the Delaware Indians, and on File in the Department of the Interior of the United States and Known as the "Delaware Register," Plaintiffs,

against

THE CHEROKEE NATION, Defendants.

No. 21139.

22 II.—*Answer to Petition.*

Filed October 4, 1898.

To the honorable the Court of Claims of the United States:

Now comes the defendant, The Cherokee Nation, and, answering the petition herein, says:

First. The defendant admits the allegations of the first, second, third, fourth and seventh paragraphs of the petition.

Second. Answering the fifth paragraph, defendant says it is unable to say of its own knowledge whether the children, descendants, heirs-at-law and personal representatives of the individuals now deceased of the Delaware tribe as registered in February, 1867, by John G. Pratt, United States Indian agent for the Delaware Indians, are in fact parties plaintiff herein or whether the individual plaintiffs hereinbefore mentioned are among the children, descendants, heirs-at-law and personal representatives of such deceased individual Delawares, but it is informed and believes, and upon such information avers, that such children, descendants, heirs-at-law and personal representatives are not among the individual plaintiffs named in said petition.

Third. Answering the sixth paragraph, defendant denies that 160 acres of land for each individual of the Delaware tribe enrolled as

aforesaid, or any other number of acres, was sold or agreed to be sold by said Cherokees to said Delawares by virtue of said agreement or otherwise, but said defendant avers that under and by virtue of said agreement each of the individual registered Delawares became a member of the Cherokee nation, and as such became entitled to select and occupy as a home, during his life only, a tract not exceeding 160 acres of the national land of said nation.

Fourth. Answering the eighth paragraph of the petition, defendant denies that the said Delawares or any of them became equitable owners of and entitled to select, possess, own and forever
23 enjoy the 157,600 acres of land as set forth in said paragraph or any part thereof.

Defendant admits that the said Delawares and their children born after the registry as aforesaid and their descendants became entitled to share in the Cherokee national fund, and in the national lands of the Cherokee nation. But defendant alleges that this right of the Delawares, their children and descendants, belongs to and attaches to them as members of the Cherokee nation solely, and not by reason of their being Delawares or children or descendants of Delawares, and that in the national lands of the Cherokee nation are and must be included all the lands (being not more than 160 acres for each individual) selected and occupied by the registered Delawares under their contract with the Cherokees; the said lands so selected and occupied being freed from all claim of occupancy or other claim of any kind upon the death of the registered Delaware who originally selected and occupied the same.

Defendant denies that the share of the Delawares in said lands or funds was or is in the proportion that the number of the said Delawares registered as aforesaid bore to the said Cherokees, or that said shares of the Delawares were or are in the ratio of 1 to 13.78, or in any other fixed and certain ratio. On the contrary, defendant alleges that each of the registered Delawares and each of their children and descendants, has been and is entitled to share in said national funds and national lands as any other member of the Cherokee nation, having the same rights and privileges and none other of other members of the said nation, save and except the right to each of the said registered Delawares living at the time of any future allotment of national lands to have set off and allotted to him at least 160 acres of land to be selected by him as specifically set out in the contract made between the Delawares and Cherokees, set forth in said petition.

Defendant is unable to say whether the said Delawares se-
24 lected the said 157,600 acres of land from the Cherokee reservation east of 96 degrees of west longitude and entered into the occupancy and possession of the same or made valuable improvements thereon, but is informed and believes, and so believing avers, that said Delawares have not selected, occupied and improved the said 157,600 acres of land as alleged, and defendant asserts that if the children, descendants, heirs-at-law, and personal representatives of said registered Delawares have continued to occupy and

possess the said lands and improvements it has been solely through their rights as Cherokee citizens, and not by virtue of any right or privilege of said children, descendants, heirs-at-law and personal representatives of registered Delawares as such, nor at the instance, desire or request of the said Cherokees, or of the Cherokee nation.

Defendant further admits that the said Delawares have not occupied said lands in common or in community of possession, but in severalty and individually, and defendant alleges that upon the death of an individual registered Delaware the said lands so severally and individually occupied and improved by him, being a portion of the national lands of the Cherokee nation, thereupon became free from all right or supposed right of any registered Delaware, or of any child, descendant, heir-at-law or personal representative of any such Delaware, to occupy or use the same in severalty, except such as belonged to them in common with all other citizens of the Cherokee nation.

Fifth. Answering the ninth paragraph, the defendant says that if the said Delawares have not wholly abandoned their tribal organization, and have maintained their tribal laws, customs and usages, such organization was not and is not such as existed amongst the Indian inhabitants of the United States, nor are said Delawares such as are known as and constitute an Indian tribe, but the said organization, laws, customs and usages have been preserved in a modified form, if at all, for convenience of transacting business with the Government of the United States, relating to the remnant of property still held or claimed by them as former members of the Delaware tribe, said organization, if existing, having no power or authority to manage, control or deal with the funds or lands of the Cherokee nation, or any part thereof.

Sixth. Defendant admits the allegations of the tenth paragraph of the petition.

Seventh. Answering the eleventh paragraph, defendant denies that the said Delaware Indians are legally and equitably entitled to the said 157,600 acres of land described in said paragraph, or any part thereof, except so far as each individual Delaware registered as aforesaid and now living may be entitled to occupy and enjoy 160 acres of the Cherokee national lands under the terms of the contract between the Delawares and the Cherokee nation as in said petition set forth, and to receive in any future allotment not less than 160 acres of said lands. And defendant denies that said 157,600 acres of land have been segregated as alleged, or that there was any power, authority or right vested in the registered Delawares, or any other person or persons, to segregate or set off the portion of the national lands of the Cherokee nation.

And further answering, defendant avers that if said 157,600 acres of land is set off or assigned to the said Delaware Indians, they will not be entitled to share in any part of the other Cherokee national lands. Defendant, however, believes and avers that the only true and legal allotment that can be made of the said national lands is to assign and set off to each member of the Cherokee nation an

equal portion thereof, reserving to the registered Delawares living at the time of such allotment at least 160 acres each.

Eighth. Answering the twelfth paragraph, the defendant denies that the said Cherokee nation has without right, authority or jurisdiction essayed to increase the numbers of said Cherokees,
26 or attempted to cut down and diminish the share which the said Delawares are entitled to have and receive in the funds and lands of the Cherokee nation, and alleges that if any other persons have been admitted to the Cherokee nation, or are authorized to share in the national funds and national lands of said nation, it has been done in accordance with and by virtue of the sovereign powers of said nation, properly and legally exercised under the constitution and laws of the nation, and this defendant alleges that it is not within the power and jurisdiction of this court to determine and adjudge how many there are of such persons entitled or not entitled to share in the national funds and national lands of said nation.

Ninth. Answering the thirteenth paragraph, the defendant denies that any persons not entitled thereto have heretofore participated in the division of the national funds of the Cherokee nation, or the Cherokee nation as a body and in its corporate capacity, or any individual Cherokees in official position in said tribe or nation, have wrongfully and without authority consented or agreed to the sharing in said funds by persons not entitled to share therein, or that said Delawares have been injured or damaged, or their individual shares diminished in the manner alleged in said petition, and defendant alleges that it is not within the power or jurisdiction of this court to have or order any accounting of moneys paid or distributed as alleged in said paragraph, or to order or adjudge that any moneys so paid out shall not be charged in proper ratio against the Delawares, or to order and adjudge that any payment whatsoever shall be borne solely by the members of said Cherokee nation other than said Delawares, or by the individual Cherokees consenting and participating in said payment, or to order or adjudge that the said Delawares may receive the part or share of such lands and funds which they would have received if it had not been for any payments or distributions of funds heretofore made.

Tenth. Answering the fourteenth paragraph, the defendant
27 denies that it has without right or authority, used its communal funds or expended the same wastefully and lavishly, as in said paragraph mentioned.

And defendant alleges that this court is without authority or power to direct an accounting of the moneys alleged to be unlawfully, wastefully and lavishly expended, or to direct that no part of the same shall be charged against the shares of the said Delawares, and that the whole thereof shall be charged against the shares of the said Cherokees or the members of the Cherokee nation other than the said Delawares, or that the said Delawares may receive the same part, share and proportion of the said lands and funds that they would have received if the payments and

expenses referred to in said paragraph had not been made and incurred.

Eleventh. Answering the fifteenth paragraph, defendant denies the allegations thereof, and alleges that this court is without power or authority to order an accounting of the moneys alleged in said paragraph to have been paid out and expended by the said Cherokees, or to make such order or decree as in said paragraph is prayed for. Further answering the twelfth, thirteenth, fourteenth and fifteenth paragraphs of said petition, defendant alleges that the individual Indians, known and designated for the sake of convenience as the Delaware Indians residing in the Cherokee nation, are each members of the Cherokee nation, and each of them of lawful age is a voter, and, in conjunction with the other members of the Cherokee nation, has from time to time participated in the election of the chiefs and national councils of said nation, and if any or all of the things alleged in said four paragraphs have been done, it has been through acts and proceedings of the said national council and approved by the said chiefs, and the said Delawares, being members of said Cherokee nation, have no right to complain thereof and this court is without power or authority to correct such misdoings, if any there be, and the said Delawares can alone secure redress, if
28 any, through petition to the proper authorities of the nation of which they are members.

And further the defendant avers that the funds and lands of the Cherokee nation are national funds and national lands, that they are not communal and national property, and no citizen of the Cherokee nation can have any division save the divided interest or share in said lands and funds so long as they remain national property, nor until the Cherokee nation shall, by a law of its national council, provide for the per capita distribution of the same.

Wherefore this defendant prays judgment that the petition be dismissed with its reasonable costs and expenses herein incurred.

WM. T. HUTCHINGS,
Attorney for Defendants.

Muscogee, Ind. Ter.

29 Court of Claims.

THE DELAWARE INDIANS RESIDING IN THE CHEROKEE Nation, as a Tribe and Individually; George Bullette, Henry Armstrong, John H. Secondine, John Young, John Sarcoxie, Jr., Individual Delaware Indians Residing in the Cherokee Nation, and the Business Committee of Such Delaware Indians, John Bullette and Richard C. Adams, Individual Delaware Indians Residing in Said Cherokee Nation and the Representatives of Said Delaware Indians and Said Business Committee, Suing on Behalf of Themselves and All Other Delaware Indians Now or Lately Residing in Said Cherokee Nation and the Children, Descendants, Heirs at Law, and Personal Representatives of All the Deceased Delaware Indians Whose Names Appear upon the Register of Delaware Indians Made in February, 1867, by John G. Pratt, the United States Indian Agent for the Delaware Indians, and on File in the Department of the Interior of the United States, and Known as the "Delaware Register," Plaintiffs,

against

THE CHEROKEE NATION, Defendants. } No. 21139.

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34 *Deposition of Simon Secondine, for Claimants, Taken at Muscogee, Indian Territory, on the 6th Day of December, A. D. 1898.*

Claimants' counsel, Marx E. Harby; defendants' counsel, William T. Hutchings.

The witness, having been duly sworn to tell the truth, the whole truth, and nothing but the truth relative to the case on which he is to testify, testifies as follows:

Direct examination by Mr. HARBY:

Question. Please tell your name, age, occupation, and place of residence.

Answer. My name is Simon Secondine; I am 45 years of age; I am a farmer and live on California creek, 5 miles northwest of Nowata.

Question. Mr. Secondine, you are one of the plaintiffs in this suit?

Answer. Yes.

Question. Please state when you first knew of the agreement of 1867, entered into between the Delaware and Cherokee Indians, referred to in the petition.

Answer. I don't know. I have heard the old folks talking of it.

Question. Well, you were one of the registered Delawares in Kansas, were you not?

Answer. Yes, sir.

Question. And you remember when they left there?

Answer. Yes.

Question. And you remember that before they left this agreement was being talked about amongst the people?

Answer. Yes, sir.

Question. What was your father's name, Mr. Secondine?

Answer. James Secondine.

Question. Did he hold any position in the Delaware nation?

Answer. He did before he died.

Question. What position was that?

Answer. Chief.

Question. Was he a member of the council?

Answer. He died up in Kansas.

Question. In Kansas, before he died, was he a member of the Delaware council?

Answer. Yes.

Question. How did the Delaware people, the members of the

Delaware tribe, know about this agreement referred to in the petition?

Answer. Of course they had a council to tell the people.

Question. They heard of it through their chiefs?

Answer. Yes.

Question. Did the chiefs explain it to the people?

Answer. Yes.

Question. Was it talked about amongst the people?

Answer. A great deal; yes, sir.

Question. You were there and knew many of the Delawares?

Answer. Yes.

35 Question. You had many friends and acquaintances amongst them?

Answer. Yes.

Question. Did you hear them talking about it?

Answer. Yes.

Question. As far as you can say, it was generally known amongst them?

Answer. Yes.

Question. Can you explain what the chiefs explained this agreement to be; what they told them it was?

(Objected to by counsel for defendants, Mr. Hutchings, because the question is incompetent to vary written contract by such evidence; said suit being to enforce the contract and not to reform it.)

Answer. The agreement was that they bought 160 acres of land in the Cherokee nation.

Question. Did they say anything about their having any other rights besides, after?

Answer. Yes, sir.

Question. What did they say about that?

Answer. They said they had bought everything; put in their *pro rata* share of money in the general funds, also in the school funds and the orphan funds and the asylum funds.

Question. Did they say whether or not they would have equal rights with the Cherokees?

Answer. Yes, sir.

Question. How did the chiefs explain the right the Delawares would have in this land? What kind of right did they say they would have?

(Counsel for the defendants objects to this question also, for the reasons stated above, that the entire contract is in writing and can not be varied or contradicted before evidence.)

Answer. They said we buy 160 acres, also a communal right with the Cherokees.

Question. Well, I must explain to you, Mr. Secondine, that the Cherokees claim in their petition filed in Washington that, according to the agreement, when a Delaware died the land would revert, go back to the Cherokees; that a Delaware had only the right to use it

for his life. Now, I ask you whether the chiefs of the Delawares explained to the Delaware people that this was the agreement, or whether they explained it differently?

Answer. Well, I did not hear them say that it would revert back to the Cherokee nation at all.

Question. Did they explain who would own the land when a Delaware would die? Who would own it?

Answer. Of course, the children.

Question. The children?

Answer. Yes.

Question. And that was the way they explained it to the people?

Answer. Yes.

Question. Did the Delaware chiefs say the Delawares would get the same rights and title to this 160 acres which each one was to receive as the Cherokees had, or did they say they would only have the use of it?

Answer. Oh, no. He was to get 160 acres, even although the Cherokee got only 40, and besides he was to get Cherokee rights.

36 Question. What I am trying to get at is this 160 acres which he was to get. How were you to own it—the same as a Cherokee or differently?

Answer. He was to locate it; pick out a claim and settle on it.

Question. Did not they understand that they would get as much right to it as a Cherokee had?

Answer. Yes, sir.

Question. Now, you left Kansas in 1868?

Answer. Yes, sir.

Question. Before you left the Indian agent among the Delawares made a roll of everybody that was to come here to the Indian Territory?

Answer. Yes.

Question. After that roll was made, and before they all got here, did any of them die or disappear?

Answer. Yes; there was some, but I could not tell how many.

Question. Well, were there 50?

Answer. I could not tell you.

Question. You don't know the exact number?

Answer. No.

Question. Well, do you remember whether or not, after they got here in the winter of 1869, any of them died?

Answer. Yes, sir; a great many. My mother died, and my grandmother; also several in my family.

Question. That year was very hard on the Delawares?

Answer. Yes, sir, it was.

Question. You think as many as 200 died?

Answer. Could not tell how many.

Question. Well, could you approximate? What is the nearest your recollection would be? Between one and two hundred?

Answer. Somewheres along there.

Question. You remember the Delawares paying the full amount for the land in 1869?

Answer. Yes.

Question. Now, knowing that so many Delawares had died, why did they not protest against paying the full amount?

Answer. I suppose they agreed to buy so much land and to pay so much for it.

Question. When you came to the Indian Territory among the Cherokees, did you select your land?

Answer. Yes, sir, I got a farm.

Question. What did you do to it? Did you improve it—make any changes?

Answer. Yes; built houses; put out orchard; put fences around the farm.

Question. You are acquainted with the value of farm improvements in the Indian Territory, are you not?

Answer. Yes, sir.

Question. You have been a farmer there from 1868?

Answer. Yes, sir.

Question. What was the value of the improvements you put up, approximately?

Answer. About $3,000.

37 Question. Did your neighbors, the Delawares, get land and improve it the same as you did?

Answer. Yes.

Question. Do you remember the form of government that the Delawares had in Kansas?

Answer. Chiefs and councilors.

Question. And they retained that form of government among the Cherokee Indians up to the time of the death of Chief Charles Journeycake?

Answer. Yes, sir; he was our chief.

Question. Up to the time of his death they were governed the same as in Kansas?

Answer. Yes.

Question. When he died there was a change made?

Answer. Yes; there was 5 of a committee appointed to act in place of the chief.

Question. And this committee was called the business council.

Answer. Yes.

Question. And this committee does the same as the chiefs and council used to do in Kansas?

Answer. Yes.

Question. Do you know anything of the Delawares building churches and schools?

Answer. Yes.

Question. Have they done that?

Answer. Yes, sir; they have built two good churches.

Question. Did the Delawares or Cherokees build them?

Answer. The Delawares.

Question. How about the schools?
Answer. We built them.
Question. You remember there were two on California creek and two on Caney?
Answer. Yes; and one on Lightning creek.
Question. Did the Delawares or Cherokees build them?
Answer. The Delawares.
Question. You are well acquainted among the Delawares. Do they all live together or does each one own his own farm?
Answer. Each one owns his own farm.
Question. Separate from the rest of them?
Answer. Yes.

Cross-examined by COUNSEL FOR DEFENDANTS:

Question. I understood from you, Mr. Secondine, that you paid into the Cherokee treasury the amount of $1 an acre for 160 acres each of land for each Delaware that was registered, and that you paid also into the Cherokee treasury an amount that would be proportionate to the entire Cherokee national fund—that is, make the Delawares equal per head with each Cherokee citizen. What else did you buy?
Answer. I bought 160 acres of land.
Question. I asked you as above, What else did you buy?
Answer. A right, I expect.
Question. What did you pay for that right?
Answer. I paid in my part or share of money. That is the way I understood with the Cherokees.
38 Question. Don't you know that at the time this agreement was made that the Cherokees had about 1,000 acres of land apiece?
Answer. Yes.
Question. Then what did the Delawares pay them to give you an equal share in that 1,000 acres of land or any more than your 160 acres?
Answer. I don't know.
Question. Have you ever read the agreement between the Delawares and the Cherokees?
Answer. Yes, sir; I have read it.
Question. All of that agreement was put in writing, so far as you know, was it not?
Answer. Yes.
Question. How old were you when these negotiations were going on, Mr. Secondine?
Answer. I was going on 15.
Question. Who did you ever hear talking about it?
Answer. I have heard different parties. I went to school at the agency at the mission, and I often heard them speak about it. I was interested about them going to a new country, like a boy would be.

Question. Did they tell you that if you would buy 160 acres that those Cherokees would throw in 840 acres more?

Answer. They did not tell me at all. I have heard the men talking about it amongst themselves.

Question. You never did know what they agreed to until you got old enough to read the agreement?

Answer. Only what I have heard them say.

Question. Have not the Delawares exercised the same rights and suffrage in the Cherokee nation—elected members to the senate and council just the same as all other parts and people of the Cherokee nation?

Answer. Yes, sir; they have elected one senator that I know of—that is Mr. Bullette—and several councilors.

Question. Have the Delawares, ever since they became a part of the Cherokee nation, ever held formal election for council or chief?

Answer. Amongst themselves?

Question. Yes, sir.

Answer. They appointed a committee.

Question. Well, held a form of election for council and chief?

Answer. Yes; they formed a council.

Question. I say a formal election?

Answer. Among themselves they held a council and picked out those men.

Question. Did they ever hold a council or elect a council for any other purpose than to select a business committee with which to deal with the Interior Department of the Government?

Answer. Anything that would come before the Delaware tribe in the way of business would go to the business committee.

Question. Have the Delawares, ever since they became a part of the Cherokee nation, attempted to enact, or have they ever enacted, any laws of their government as a people distinct and separate from the Cherokees?

Answer. Not that I know of.

Examination concluded.

39 It is stipulated and agreed by and between Marx E. Harby, as counsel for plaintiffs, and William T. Hutchings, attorney for defendants—

1. That the above questions were duly, properly, and actually put to Simon Secondine, the witness above named, and the corresponding answers were actually made by him.

2. That the said questions and answers be read as testimony and evidence in this case, subject only to the objections above set forth.

3. That all objections to the lack of witness not having signed this testimony be and they are hereby waived.

4. That the testimony of the witness be not read over to him, nor be signed by him, and that said testimony and evidence were taken, and the reading of the testimony over to the witness, and his signature, were waived pursuant to agreement between the parties hereto,

and all statutes and rules of procedure to the contrary are hereby expressly waived.

Dated at Muscogee, Ind. T., December 6, 1898.

MARX E. HARBY,
Counsel for Plaintiffs.
WILLIAM T. HUTCHINGS,
Attorney for Defendants.

I do hereby certify that the foregoing stipulation was duly and properly signed and agreed to by William T. Hutchings, attorney for the defendants, and Marx E. Harby, counsel for the plaintiffs, both personally known to me, and known to me to be the persons who executed the same; that the witness, Simon Secondine, was duly and properly sworn, and that the answers to the questions put to him were taken down in his presence.

Dated at Muscogee, Ind. T., December 6, 1898.

[SEAL.] D. J. BALL,
Notary Public in and for the Northern Judicial District of the Indian Territory.

Deposition of John Bullette, for Claimants, Taken at Muscogee, Ind. T., on the 6th Day of December, A. D. 1898.

Claimants' counsel, Marx E. Harby; defendants' counsel, William T. Hutchings.

The witness having been duly sworn to tell the truth, the whole truth, and nothing but the truth relative to the case on which he is to testify, testifies as follows:

Direct examination by Mr. HARBY:

Question. Please give your name, age, occupation, and place of residence.

Answer. My name is John Bullette; I am 47 years of age; I live at Claremore, Ind. T., and I am a farmer.

Question. I want to know when you first knew you were going to move over here from Kansas?

40 Answer. I first knew that I was going to move here, to the best of my recollection, about 1867.

Question. Now, you were part of the Delaware tribe in Kansas before you came here to the Territory?

Answer. Yes, sir.

Question. And you remember the Delawares talking about this agreement, which is of 1867, between the Delawares and Cherokees, which is set out in our petition?

Answer. Yes, sir.

Question. And how did you know of it—from the chiefs and council?

Answer. Who—the Delawares?
Question. Yes.
Answer. Yes, sir.
Question. And they talked about it amongst themselves?
Answer. Yes, sir.
Question. What did they say they were going to get by this agreement?

(Counsel for defendants objected to the question because the consideration that all matters pertaining to the agreement were reduced to writing and can not be varied.)

Answer. Well, they were to get the land they paid for and Cherokee citizenship.
Question. How much land to each one were they to get?
Answer. One hundred and sixty acres.
Question. What sort of right was each Delaware to have in this land?
Answer. Full Cherokee right.
Question. According to what they said as to this right, what would happen to this land in case a Delaware was to die?

(Same objection to this question as the one above.)

Answer. They considered it an absolute purchase of the land.
Question. So that if you should die, what then?
Answer. They supposed it would by theirs—belong to the estate.
Question. Is this the first time you heard of it when the suit was brought?
Answer. No, sir; this is not the first time. It has been talked all over the country.
Question. Was anything to the contrary spoken of about the time the land was paid for?
Answer. I guess not.
Question. Now, you understood that in addition to getting this land they were to get all the rights in the Cherokee nation that a Cherokee citizen has?
Answer. That was my impression and of my old uncle, John Conner, the chief, and I was at his house all the time.
Question. Is this the Captain Conner who was one of the parties who signed that contract?
Answer. Capt. John Conner I refer to. He was my uncle—my mother's brother.
Question. And he said, according to this agreement, each would get absolute right to 160 acres of land and also all the rights that pertain to Cherokee citizenship?
Answer. Yes.
41 Question. You understood that in addition to paying for this land they also paid a certain sum into the Cherokee funds?
Answer. He said they had to pay that extra money to get a Chero-

kee right. It was the second payment, taken together with the other, that gave them all those rights.

Question. You had considerable acquaintance amongst the Delawares at that time?

Answer. Well, I was young at that time, Mr. Harby, and I only knew what I heard.

Question. You were well acquainted amongst the Delawares?

Answer. I knew a great many Delawares.

Question. And did they all understand the agreement in this way?

Answer. That seemed to be the general impression in the nation. I will just remark right here that that was an inducement for them to come here, because a great many of them did not want to come. They were accustomed to hold land up there in severalty. They had to give up the land when they came here, and they wanted to distinctly understand that they would get land when they came here.

Question. And they did so understand it?

Answer. They certainly did, or they never would have moved here.

Question. Before the Delawares left Kansas and came to the Indian Territory the agent there made a roll of all that were coming?

Answer. Yes. I did not know of him making the roll, but I heard afterwards, and I have seen it since.

Question. Anyway, when the Delawares were coming over here from Kansas, did not a good many of them die before they got here?

Answer. From all accounts there was quite a number died. I don't remember of any particular ones that died that were on the roll, and while there I guess I paid no particular attention.

Question. The general report amongst the Delawares is that quite a number of them died?

Answer. Yes.

Question. Now, this money was paid about May, 1869. Do you remember that before May, 1869, a good many of the Delawares died, not being acclimated?

Answer. Oh, yes; there was quite a number. I happened to be at home when the Cherokee notification came to Capt. John Conner that the money had not been paid and must be paid.

Question. After that it was paid, was it not?

Answer. I don't know about that; I suppose everything went off satisfactorily after that.

Question. Before that notification a good many died?

Answer. Yes.

Question. About how many—150, 200, or how many?

Answer. Yes; all of that.

Question. About how many?

Answer. Well, I believe I would be safe—I just imagine the number about 100 persons from 1867 to 1869, and I know there must certainly be more than that.

Question. Now, why did not the Delawares object to pay all of this money when so many of them had died?

Answer. Well, now, about that: they supposed, no doubt, that it was a matter of contract. They never protested against the deaths, and nothing like that.

42 Question. Are the heirs of those dead people living on the land now?

Answer. Most of them.

Question. When you came to the Indian Territory you got your land, did not you?

Answer. Yes, sir.

Question. After a time did you improve it in any way?

Answer. Yes; have been ever since I settled there.

Question. What is the nature of the improvements?

Answer. Houses, fences, etc.

Question. About what is the value of the improvements?

Answer. I suppose my improvements are worth, seven, eight, or ten thousand dollars.

Question. Are you acquainted with the value of improvements?

Answer. Yes.

Question. You have been a farmer since 1868?

Answer. Yes.

Question. And from that experience you base your estimate of the value of the improvements?

Answer. Yes, sir.

Question. You have been round amongst the Delawares in the Indian Territory, have you not?

Answer. Yes.

Question. Have you held any position in the Indian Territory?

Answer. I have held the office of district clerk, and I have held the position of prosecuting attorney for one of the districts.

Question. Are you a member of the business council of the Delawares?

Answer. Yes, sir; I am clerk of the business council of the Delawares.

Question. You are well acquainted amongst the Delawares?

Answer. Yes.

Question. Have been round amongst them considerable?

Answer. Yes, sir.

Question Have seen their farms and buildings?

Answer. Yes.

Question. Is the land improved or unimproved?

Answer. Generally improved. The Delawares have generally improved their lands.

Question. Do you know of any Delawares who took up land- that have failed to improve them?

Answer. No; I don't believe I do. They have all more or less improvements.

Question. Do you remember what form of government the Delawares had amongst themselves in Kansas?

Answer. They had council, chief, and clerk.

Question. They kept that up until the death of Chief Journey-cake in the Cherokee nation?

Answer. Yes.

Question. When did he die?

Answer. He died in the Indian Territory in '95.

Question. After the Delawares came among the Cherokees?

Answer. Yes.

Question. And after he died they elected a business council, did they not?

43 Answer. Yes.

Question. And this business council exercises the same power as the chief and council used to do?

Answer. Supposed to do.

Question. Do you hold your land separate from the rest of the Delawares, or do you hold it in common with them all?

Answer. No. I hold my farm individually.

Question. Every other Delaware that you know of holds his land the same way?

Answer. Yes, about the same as I hold mine, individually.

Question. Do you know of any Delaware Indian living who was a chief of the nation or a counselor of the nation in Kansas?

Answer. No, sir; I do not.

Question. They are all dead?

Answer. I think so. John Conner, Sarcoxie, Charles Journey-cake, and Andrew Miller and all the rest are dead. I do not remember of any that are alive.

Question. It was a habit and custom amongst the Delawares, when they had something of importance to be considered by the nation, for the chiefs and council to make it known to them?

Answer. Oh, yes.

Question. You might say the chiefs and council were the heralds of the people?

Answer. Yes.

Question. And there was constant visitation going on amongst them?

Answer. Yes, there were occasional meetings to talk those matters over.

Question. The people throughout the nation visited like other people do?

Answer. Certainly.

Question. When this agreement was put before the people, the chiefs told the people what the terms of the agreement were and explained it to them?

Answer. Yes.

Question. A majority of the people understood the explanation?

Answer. A great many of them were indifferent then and are yet about what is going on. They rely upon the leading ones of the tribe to see that everything goes on right—how it is conducted.

Question. Now, when they had these talks on the subject of this

agreement, did they speak about what title the Delawares were to get to this land?

Answer. They certainly expected a right and title to the land.

Question. What kind of title? The same as the Cherokees?

(Counsel for defendant objects to this question on the ground that the agreement speaks for itself.)

Answer. They fully believed that their children would inherit it. They occupied separate allotments in Kansas and it was a matter of inducement for those people to come down here and give up their allotment there for the price paid to them, $2.50 per acre. There is a good many of them were led to believe that they were paying $1 an acre for 160 acres. They gave up 80 acres in Kansas for $2.50 an acre to get 160 acres at $1 an acre.

44 Question. What did they get for their land in Kansas?

Answer. $2.50 per acre.

Question. And they thought they were to own 160 acres here just the same as they owned 80 up there?

Answer. That was the understanding. The understanding was that, in addition to that, they paid the sums of money mentioned in the contract which gave them equal rights and interest with the Cherokees in everything pertaining to the Cherokee nation. That was the understanding.

Question. You understood they had equal rights with the Cherokees?

Answer. It made them equal with Cherokees in every respect.

Cross-examined by WILLIAM T. HUTCHINGS, counsel for defendants:

Question. Do you know about how much land the Cherokees owned *per capita* at the time the Delawares bought an interest in the nation?

Answer. I know about how much they claimed.

Question. How much?

Answer. They laid claim to something like 5,000,000 acres.

Question. Your people bought and paid for 160 acres apiece at $1 per acre, did they not?

Answer. Yes, sir.

Question. And they paid into the Cherokee national fund an amount that would make them equal with other Cherokee citizens so far as that fund was concerned, did they not?

Answer. Yes, sir.

Question. What did your people give to entitle them to share in that extra number of acres?

Answer. They did not pay anything more.

Question. Well, I ask you did you expect to get that extra 840 acres of land—when would you pay for it?

Answer. Well, we paid $121,000 odds into the common fund.

Question. The nation could not get any benefit at all from that money, could it?

Answer. Well, it was a common fund.

Question. You contributed that money so the Government was to look after and give you schools and various things like that, so that you were not to get anything from the Cherokee nation for that except what you would get afterwards in case of dissolution of partnership?

Answer. Well, the $121,000 odds was to make the Delawares equal with the Cherokees.

Question. Equal in money, though?

Answer. I don't understand it that way.

Question. Now, Mr. Bullette, when you and all the Delawares that you know settled on land in the Cherokee nation, were you at all particular whether it was 160 acres of land or whether it was 500?

Answer. No, sir; we fell along with the rest and went to monopolizing.

Question. In other words, you made your settlement under the laws of the Cherokee nation, did you not? And settled just as much as you were able to inclose?

45 Answer. Yes.

Question. And then claim your quarter mile limit as Cherokee citizens besides?

Answer. Yes.

Question. And is not this claim of 160 acres a recent development altogether on the part of the Delawares?

Answer. It is a recent move to secure their allotment.

Question. Did not your people draw their share in the *per capita* payment of the proceeds of the sale of the Outlet?

Answer. Well, now, I would not say whether they did or not, but I will say they drew their *per capita* as other Cherokees did.

Question. Which amounted to how much?

Answer. I could not say.

Question. Was not the amount they drew over $200 apiece?

Answer. Oh, yes.

Question. Did not this sum aggregate more to your people than the amount of money they paid into the national fund to make them equal in said fund with other Cherokee citizens pursuant to the original agreement with the Cherokees?

Answer. Yes; I presume it was more in the aggregate, not counting interest or anything like that.

Question. Then your people have already, if they were only made Cherokees, with the same rights as Cherokees, made a most excellent profit on their investment?

Answer. No; not exactly, Mr. Hutchings, because they had to sacrifice valuable land and valuable improvements up in Kansas.

Question. Have the Delawares ever kept up any organization for the political government of their people since they became a part of the Cherokee nation other than a business committee to attend to their individual affairs with the Government?

Answer. They have kept up an organization of their own.

Question. That's what I mean. Have they made any laws?

Answer. No; they have got up an organization for the management of their business affairs with the United States Government.

Question. Have they not always participated in the regular Cherokee elections, voted for chiefs, and members of both houses of the council, judges, and so forth?

Answer. Yes, sir.

Question. Have not the Delawares always had the same rights to the same representation in the council of the nation, and run their own office in the Cherokee nation, except that of chief, that any other citizen of the Cherokee nation had?

Answer. They always had a right under the law but they have never had the same number or the same representation that the Cherokees had.

Question. Have you not yourself sat as a member of the council of the Cherokee nation? And if so, state how many terms.

Answer. Yes; one time.

Question. Do you know Mr. J. E. Campbell?

Answer. Yes.

Question. And Jake Bartles?

Answer. Yes.

Question. And J. G. Barndollar?

46 Answer. Yes.

Question. And are they not citizens of the Cherokee nation by virtue of their marriage to Delaware women?

Answer. There is no question about J. E. Campbell. I will say that much.

Question. Is there any about Barndollar?

Answer. He has been exercising rights of citizenship, and are no doubt considered citizens. They married Delawares that were admitted specially by the Cherokee council. Bartles and Barndollar married women that were not citizens until they were readmitted to citizenship.

Question. Has Mr. Campbell ever been guided by the 160-acre limit in making improvements on the public domain in the Cherokee nation?

Answer. I think not.

Redirect examination by MARX E. HARBY:

Question. I understand that there was a payment made to the Delawares out of some Cherokee funds. State the circumstances of the Delawares obtaining that payment which you mentioned on cross-examination.

Answer. That is in regard to that $295.75, if that be the correct amount?

Question. Yes. State the circumstances of that.

Answer. Well, I will say this, that we had to force the Cherokees to pay this.

Question. In what way?

Answer. Before the Court of Claims.

Question. You were asked if this claim that the Delawares make to the individual right to 160 acres absolutely is a new thing with the Delawares. You answered that this move was now. You refer in that the bringing of the suit was new, do you not?

Answer. What I wanted to convey was that the Delawares might have long since demanded their 160 acres of land had the opportunity been given them in the way of surveys to secure the land, and it is only recently that surveys have been made which would enable them to do so, and they have been more or less restless since they have been made to secure the land. Their idea was that it was not capable of division until this recent survey was made, to avail themselves of what they deemed their rights.

Question. Please say whether you know of any other matter relative to this claim.

Answer. No there is nothing I can think of that is material in addition to what I have already answered.

Examination concluded.

It is stipulated and agreed by and between Marx E. Harby as counsel for plaintiffs, and William T. Hutchings, attorney for defendants:

1. That the above questions were duly, properly, and actually put to John Bullette, the witness above named, and the corresponding answers were actually made by him.

2. That the said questions and answers be read as testimony and evidence in this case, subject only to the objections above set forth.

3. That all objections to the lack of witness not having signed this testimony be and they are hereby waived.

4. That the testimony of the witness be not read over to him nor be signed by him, and that said testimony and evidence were
47 taken, and the reading of the testimony over to the witness and his signature were waived pursuant to agreement between the parties hereto, and all statutes and rules of procedure to the contrary are hereby expressly waived.

Dated at Muscogee, Ind. T., December 6, 1898.

MARX E. HARBY,
Counsel for Plaintiffs.
WILLIAM T. HUTCHINGS,
Attorney for Defendants.

I do hereby certify that the foregoing stipulation was duly and properly signed and agreed to by William T. Hutchings, attorney for the defendants, and Marx E. Harby, counsel for the plaintiffs, both personally known to me, and known to me to be the persons who executed the same; that the witness John Bullette was duly and properly sworn, and that the answers to the questions put to him were taken down in his presence.

Dated at Muscogee, Ind. T., December 6, 1898.

[SEAL.] D. J. BALL,
Notary Public in and for the Northern Judicial District of Indian Territory.

Deposition of James Wilson, for Claimants, Taken at Muscogee, Ind. T., on the 6th Day of December, A. D. 1898.

Claimants' counsel, Marx E. Harby; defendants' counsel, William T. Hutchings.

The witness having been duly sworn to tell the truth, the whole truth, and nothing but the truth relative to the case on which he is to testify, testifies as follows:

Direct examination by Mr. HARBY:

Question. Give your name, age, residence, and occupation.

Answer. My name is James Wilson; I am 53 years of age; I live 3 miles below Bartlesville, and I am a farmer.

Question. Were you in Kansas at the time of this agreement between the Delawares and the Cherokees when it was being considered?

Answer. Yes, sir; I was not with the treaty party, but I was in the State of Kansas.

Question. Did you talk with Chief Journeycake about it?

Answer. Yes; I had talked with Mr. Journeycake about the agreement.

Question. What did Chief Charles Journeycake tell you about the agreement?

Answer. Mr. Journeycake told me that there was an agreement between the Cherokee nation and the Delawares. That the Delawares were to buy 160 acres of land and pay for it to the Cherokees.

Question. Did Chief Journeycake tell you that after the Delawares had bought this land that they were to have it as their own?

Answer. Yes, sir; as our own land.

Question. Did Chief Journeycake tell you that when a Delaware died his children would have the land which they bought?

48 Answer. Mr. Journeycake told me that they bought this land from the Cherokee nation for the present generation, and on top of that they bought the Cherokee right for the coming generation.

Question. When a Delaware died would the children have the same right in the land that the father had?

Answer. I don't understand whether the children had as much right as the father had, but the way I understand it the land I had bought myself would go to my heirs whenever I died.

Question. Is this what you mean by your answer to the question just before the last question?

Answer. Yes.

Question. Did you come here with the rest of the people to get your land?

Answer. I came down here with part of the Delawares. They did not come down here all together.

Question. Before they came here did not the Indian agent make a roll of those that wanted to come?

Answer. Yes; there was a roll prepared for those that were coming and a roll for those that were to stay there.

Question. After that roll was made, before the Delawares got to their land in the Cherokee nation, did you not hear it being talked about that a good many of the people that were on the roll died?

Answer. Yes. That was the talk, but I don't know if I could call names, or how many there was died before they came into the Cherokee nation.

Question. When the Delawares paid for this land why did they not protest against paying for the ones that died?

Answer. The way I understood it that that land would go to the heirs even if the parties were dead.

Question. When you came here did you take your land and make your improvements on it? If so, what improvements?

Answer. Yes, when I came to the Cherokee nation I picked me a claim and built me a log-cabin house.

Question. Have you since improved your land?

Answer. I sold my first farm and went over on Caney, where I live now.

Question. What improvements are there on your Caney farm?

Answer. I built me a house; have got nursery, shubbery, and I have got 200 apple trees set out, and 400 grapevines. I have done the best to improve the land, supposing that it was mine.

Question. What is the value of your improvements?

Answer. They are worth about a couple of thousand dollars at least.

Question. Did you understand from Chief Journeycake that, in addition to getting this land, each Delaware that came to the Cherokee country would receive all the rights of the Cherokee citizens, the same as the other Cherokees?

Answer. Yes, sir; that is the way I understood it.

Question. And by equal rights you understand every right a Cherokee has of any kind whatever?

Answer. Yes.

Question. The Delawares in Kansas had a form of government. They had chiefs and council; is that so?

Answer. Yes.

Question. Did they not keep up that form of government
49 after they left Kansas and when they came into the Indian Territory, up to the time of the death of Chief Journeycake?

Answer. That was kept up until in the distribution of the general fund of the Delawares. They had a chief and council until then.

Question. They have now a business committee which does the same thing as the chiefs and council used to do?

Answer. Yes; they tried to go ahead without a leader and could not do a thing; finally they elected a committee to do business for them.

Question. Do you hold your farm as your own, separate from anybody else?

Answer. Yes; just me and my family.

Question. Do the other Delawares hold their's in the same way?

Answer. I suppose they do.

Question. Are you well acquainted amongst the Delawares? Do you know many of them?

Answer. Yes; I am well acquainted with a good many of the Delawares but I don't know anything about their business.

Question. You mean you don't know anything more than you see?

Answer. Yes.

Question. Did you not say that each one keeps his farm to himself and uses it for himself and family?

Answer. Yes.

Cross-examined by WILLIAM T. HUTCHINGS, counsel for defendants:

Question. When you settled in the Cherokee nation, how much land did you settle on?

Answer. I suppose I settled on 160 acres and then a quarter of a mile all around that.

Question. Have you ever taken in any more than 160 acres?

Answer. No.

Question. Did all the Delawares try and settle on 160 acres apiece when they came to the Cherokee nation?

Answer. I did not know what the rest of them were doing, but I suppose they were doing the same as myself.

Question. How much did old man Journeycake inclose and settle on, at the start and at his death?

Answer. I don't know. He had a big farm.

Question. Did he not have a heap more than 160 acres?

Answer. Oh, yes.

Question. Did he not have a heap more than 500 acres?

Answer. I could not tell whether there was 400 or 500 acres. It is a large field.

Question. When was the last time you ever voted for chief of the Delaware people?

Answer. I don't know as the Delawares ever elected a chief. It seems it used to run in the family.

Question. Were not you and your people always governed by the laws passed by the Cherokee council?

Answer. Yes.

Question. When anybody of the Delawares died, did not the Cherokee courts administer on the estate?

Answer. Yes.

Question. And was not their property, including the im-
50 provements, divided among the family and descend to them under the laws of the Cherokee nation?

Answer. Yes; that's right.

Question. Did you ever talk with any of the parties who signed the agreement between the Delawares and Cherokees except Chief Journeycake?

Answer. Yes; I have heard most of them explain this agreement.

Question. I mean of those that signed it?

Answer. Yes; when they were living, I don't know how many years ago.

Question. Was it since they moved to the Cherokee nation?

Answer. Yes.

Question. Was all the talk that you have heard about it since you have moved to the Cherokee nation?

Answer. No, not altogether; only when the Cherokees mistreated the Delawares.

Question. What did you hear them say about it before the agreement was made?

Answer. Really, I was not paying any attention to what they were saying, only I learned that I had to come down here in the Cherokee nation.

Question. What you heard them say was after the agreement was made?

Answer. Before the agreement was made I knew the Delawares sent a delegation down here to look at the country and after they got back to Kansas they sent a delegation to Washington to close a trade with the Cherokees.

Question. Was it after that that Journeycake and those men told you what the agreement was?

Answer. I never knew anything about the agreement until Journeycake told me that there was an agreement made between the Cherokees and the Delawares.

(Counsel for the defendant objects to all the foregoing answers and evidence of the witness with reference to the agreement between the Delawares and Cherokees in controversy and asks that the same be withdrawn and stricken from the record because his information came from an agent of the Delawares after the execution of his agency and after the contract had been made and fully completed.)

Redirect examination by MARX E. HARBY:

Question. Now, Mr. Wilson, you knew when this party called a delegation went to the Indian Territory to look at the land that it was to be sent there for purposes which were afterwards expressed in this agreement?

Answer. No; I don't know anything about it at all. I was paying no attention. I was young and the power was in the hands of the chief and council.

Question. When you spoke of Chief Journeycake, did you not know that the agreement had not actually been signed, but that he was telling you what the Cherokees wanted the Delawares to agree to?

Answer. Mr. Journeycake told me that the Cherokees would not sell a tract of land in here, but that we could buy 160 acres of land.

Question. After Journeycake told you that, did not the Delawares send a delegation back to Washington to sign the agreement?

51 Answer. No; the way I understood it the treaty and agreement was already signed up.

Question. When the Delaware father came to the Cherokee nation, if he had a wife and children, was it not the custom to take up, in addition to his own 160 acres, 160 acres for each child and 160 acres for his wife in addition to his own?

Answer. No. When the Delawares came here they went to work and fenced what they could. There was none of them fenced up to 160 acres at the start. If they did, it was very few of them.

Question. Since they were able, did they not of their own accord take up 160 acres for each of the family?

Answer. Yes.

Recross-examination by WILLIAM T. HUTCHINGS, counsel for defendants:

Question. Did you know that the question of 160 acres never entered into the mind of the Delaware at any time when he made his improvement, and that he just improved as much as he was able to, regardless of the amount?

(Counsel for the plaintiffs objects because the question calls for the witness's construction of what was in another's mind and demands that he give as evidence the conclusion arrived at.)

Answer. They may not have thought about the 160 acres when they started their improvement, but after the Cherokees mistreated them then they wanted what they were entitled to.

Question. Do you know of anything of interest to the claimants in this case?

Answer. You might get some evidence from John Willey. He has been interpreter for those agents ever since he was a boy.

Examination concluded.

It is stipulated and agreed by and between Marx E. Harby, as counsel for plaintiffs, and William T. Hutchings, attorney for defendants—

1. That the above questions were duly, properly, and actually put to James Wilson, the witness above named, and the corresponding answers were actually made by him.

2. That the said questions and answers be read as testimony and evidence in this case, subject only to the objections above set forth.

3. That all objections to the lack of witness's not having signed this testimony be, and they are hereby, waived.

4. That the testimony of the witness be not read over to him nor be signed by him, and that said testimony and evidence were taken, and the reading of the testimony over to the witness and his signa-

ture were waived, pursuant to agreement between the parties hereto, and all statutes and rules of procedure to the contrary are hereby expressly waived.

Dated at Muscogee, Ind. T., December 6, 1898.

MARX E. HARBY,
Counsel for Plaintiffs.
WILLIAM T. HUTCHINGS,
Attorney for Defendants.

I do hereby certify that the foregoing stipulation was duly and properly signed and agreed to by William T. Hutchings, at-
52 torney for the defendants, and Marx E. Harby, counsel for the plaintiffs, both personally known to me and known to me to be the persons who executed the same; that the witness James Wilson was duly and properly sworn, and that the answers to the questions put to him were taken down in his presence.

Dated at Muscogee, Ind. T., December 9, 1898.

[SEAL.] D. J. BALL,
Notary Public in and for the Northern Judicial District of the Indian Territory.

Deposition of Mary E. Armstrong, for Claimants, Taken at Nowata, Ind. T., on the 7th Day of December, A. D. 1898.

Claimants' counsel, Marx E. Harby; defendants' counsel, William T. Hutchings.

The witness having been duly sworn to tell the truth, the whole truth, and nothing but the truth relative to this case in which she is to testify, testifies as follows:

Direct examination by Mr. HARBY:

Question. Now, Mrs. Armstrong, will you please give your name, age, residence, and present occupation?

Answer. My name is Mary E. Armstrong; I am 60 years of age; my home is 1 mile north of Coody's Bluff; I run a farm.

Question. Who was your father, Mrs. Armstrong?

Answer. My father was Rev. Charles Journeycake, the last and late chief of the Delawares.

Question. When did he die?

Answer. He died in January, 1895.

Question. How long did you live with him?

Answer. I lived with him until I married.

Question. When was that?

Answer. I was married in 1853.

Question. In 1853?

Answer. Yes, sir.

Question. You lived in Kansas before you came to the Indian Territory?

Answer. Yes, sir; I was born in Kansas.

Question. You were one of the Delawares on the reservation in Kansas?

Answer. Yes, sir.

Question. Were you acquainted amongst the Delawares?

Answer. Yes, sir; pretty well acquainted.

Question. Do you remember when a delegation of the Delawares returned from Washington to Kansas in the year 1866?

Answer. Yes, sir.

Question. And what was the purpose of the delegation?

Answer. Well, there had been several delegations before; but that time, I think, was for the purpose of making arrangements to come to the Territory.

Question. Did that delegation make any report when they returned from Washington?

Answer. Yes, sir; they did.

53 Question. What did they report?

(This question is objected to by counsel for the defendants as incompetent, irrelevant, and immaterial.)

Answer. I don't just remember.

Question. Well, generally, what did they report as to the agreement that was offered to them by the Cherokees at Washington? Did they report anything as to an agreement?

Answer. Oh, yes; they reported an agreement. Their business first was to dispose of the land that the Delawares had in Kansas.

Question. The Delawares owned considerable land in Kansas?

Answer. Yes, sir.

Question. And the Government of the United States wanted the Delawares to sell that land?

Answer. Yes, sir.

Question. Each Delaware owned how many acres?

Answer. Eighty acres.

Question. What was the price the Government was to give them for that 80 acres?

Answer. They were to get $200 for the 80 acres. That was what they got?

Question. That is $2.50 an acre?

Answer. Yes, sir.

Question. Do you remember when the agreement with the Government was concluded?

Answer. Yes; I remember that it was, but I would not say just when it was.

Question. But you remember it was before the agreement with the Cherokees was signed?

Answer. Yes.

Question. When this delegation returned from Washington in 1866, they reported to the Delawares what the offer was that was made by the Cherokees, did they not?

Answer. Yes, sir.

Question. Can you tell me what these offers were that were made by the Cherokees to the Delawares?

Answer. First, I think they offered to sell them land west of the ninety-sixth degree, and then they would not be under their laws on that side, or coming on the east side of the ninety-sixth degree they would be a part of the Cherokee nation and under the Cherokee laws.

Question. Did they not report that the Cherokees offered to sell to the Delawares a certain quantity of land in the Cherokee nation?

Answer. Yes, sir.

Question. And that quantity of land was how much acres of land for each person?

Answer. Well, it was 160 acres of land for each man, woman, and child of the Delawares.

Question. Did the delegation, when they returned from Washington in 1866, say what title the Delawares would have to this land if they accepted the offer made to them by the Cherokees?

Answer. Yes, sir. It was to be their own land, but they were to live under the Cherokee laws, but to have equal rights with the Cherokees.

Question. When you say it was to be their own land, do you mean they were to have the same title to it that they had to their own land in Kansas?

54 Answer. Yes, sir; after it was sectionized.

Question. According to the offer that was made or was reported to have been made by the Cherokees in 1866, what would happen to the land that was to be given to the Delawares or was to be sold to the Delawares? Supposing a Delaware died, where would the land go?

Answer. It would go to their heirs. That's the way the delegation explained it to the Delawares.

Question. This report was made by the delegation to the Delawares for the purpose of ascertaining whether the Delawares wanted to make the agreement or not?

Answer. Yes, sir.

Question. You talked with your father and some others about this?

Answer. Yes, sir. I have heard them report that offer after they had been down here and were satisfied with the country. My father did not come. My husband came. I have heard them say, and one or two others more, that they were satisfied to leave their children with the Cherokee nation. My father had a large family. He was a man that looked well after his family.

Question. What did they say in regard to a home?

Answer. They said it would be a permanent home; that it would be their own home to do just as they liked with.

Question. The idea was they were leaving a home in Kansas to get the same kind of a home in the Indian Terrritory?

Answer. Yes, sir.

Question. Was it not a consideration with them that they were

getting 160 acres in the Cherokee nation for $40 less than what they sold the land for in Kansas?

(The defendant objects to the foregoing question and all the other questions and answers above set out for the reason that it and they are incompetent and irrelevant, the contract in this controversy being in writing and complete and not ambiguous.)

Answer. I think they did.

Question. I must explain to you, Mrs. Armstrong, that The Cherokee Nation, the defendants in this suit, claim that the contract was for the Delawares to use and occupy this land for his life, but that when he died the land was to revert to the Cherokee nation. Was that explanation made by the delegation to the Delawares?

Answer. I think they explained that the land was to be theirs forever.

Question. The Delawares did not want to buy land without owning it outright?

Answer. No, sir; they did not.

Question. And that was the decision that was made; that they would not take this land unless they owned it outright, and that their heirs that came after them would get it?

Answer. I know the Cherokees understood it that way too, because I heard William P. Ross, one of their most prominent men—he and my husband were great friends—when he first came up, I heard them talking about the agreement, and Mr. Ross said "The Cherokees have made a bad bargain; nevertheless, it was a bargain and they must stick to it." William P. Ross was chief of the Cherokee nation at one time for several years.

Question. This idea of the Delawares having a full title to this land was the subject of discussion amongst the Delaware people?

55 Answer. Yes, sir; we talked of it, of course, before we came down.

Question. Because some Delawares had died it was specially considered?

Answer. Yes, sir.

Question. The question arose as to who would get the land of those dead Delawares?

Answer. Yes, sir.

Question. And everybody seemed to think the heirs would get it?

Answer. Yes, sir; that was what every one understood, so far as I know.

Question. And the people were sure that in the event of the death of any one of them his heirs would get the land?

Answer. Yes, sir.

Question. Do you remember when the Delawares left Kansas to come over here?

Answer. Yes, sir.

Question. And before they left they were enrolled by the Indian agent, were they not?

Answer. Yes, sir.

Question. Did every one on that roll come down here?
Answer. I don't think so. I know they did not.
Question. How many failed to come here?
Answer. I don't know how many failed to come down here. I know that several died.
Question. Who do you remember that died?
Answer. I remember an old man, Captain Moonshine. He had broken down his house and loaded up his wagons and went over to a neighbor's ready to move, when he took sick and died.
Question. Any others?
Answer. I don't remember any others now—their names.
Question. About how many failed to get here after the enrollment?
Answer. I do not know as I could tell that.
Question. Why?
Answer. I heard a woman say the other day that her husband died on the road coming.
Question. Who was that?
Answer. Mrs. John Captain.
Question. Did not you notice that when you got over here from Kansas that a good many that had been enrolled were not here?
Answer. Yes, sir.
Question. How were they accounted for? What did people say had become of them?
Answer. They said a good many of them had died.
Question. The Delawares in Kansas were accustomed to hold their lands in severalty, were they not?
Answer. Yes, sir.
Question. A good many of them did not want to come to the Indian Territory?
Answer. Yes, sir.
Question. There was a good deal of discussion, was there not?
Answer. Yes, sir; there were some that did not come but stayed in Kansas, and some of the others said they had to give up their land in Kansas to the Government and were taking their land in the Indian Territory, and we thought we would have it in the same way as we had it in Kansas.
56 Question. They were particular about how they would hold that land?
Answer. Yes, sir; they were very particular as to the amount.
Question. They wanted it understood that they were to get the land same as they held it in Kansas?
Answer. Yes, sir.
Question. They were just as particular as to where they held their lands as to the amount?
Answer. Yes, sir; and not only wanted 160 acres, but wanted the privilege of doing with it as they pleased.
Question. In addition to buying this land, they were to make another payment into the Cherokee nation?
Answer. Yes, sir.

Question. And in exchange for those two payments—$1 per acre for the land and a proportionate payment to the national fund—they were to get all the rights of Cherokee citizenship?

Answer. Yes, sir.

Question. So they understood they bought two things—first, the right to hold for his own and those that came after him 160 acres?

Answer. Yes.

Question. And second, full rights of Cherokee citizenship?

Answer. Yes, sir.

Question. They understood this agreement was made by the Cherokee nation?

Answer. Yes, sir.

Question. And you make your statement as to what they understood from hearing about it?

Answer. Yes, sir.

Question. Your father was chief of the Delawares?

Answer. Yes, sir.

Question. And he knew about those things and kindred things better than most people?

Answer. Yes, sir.

Question. Mr. Journeycake was a leader of the people?

Answer. Yes, sir.

Question. He was a kind of patriarchal adviser of the nation?

Answer. Yes, sir.

Question. Never had any dispute with anyone about his leadership?

Answer. No, sir.

Question. All had an affectionate regard for him?

Answer. Yes, sir.

Question. Your husband was one of the council and one of the delegates to Washington?

Answer. Yes, sir.

Question. And you heard your father and your husband talking over those things?

Answer. Yes, sir.

Question. And the things they said were in harmony with your testimony given to-day?

Answer. Yes, sir.

Question. Can you tell us what they said?

Answer. I don't know that I can give you word for word. That has been a good many years ago.

Question. You understood that the Delawares were to own this land as their own?

57 Answer. Yes, sir.

Question. They were to own it for themselves and those that came after them as heirs and descendants?

Answer. Yes, sir.

Question. Did they say that the Delawares, in return for those payments, were to have, in addition to 160 acres for each Delaware, all the rights of Cherokee citizenship in the Cherokee nation?

Answer. Yes, sir.

Question. This money that the Delawares were to pay was paid about May, 1869. Do you remember that?

Answer. No, sir; I do not remember that part.

Question. Well, do you know that before May, 1869, of considerable mortality amongst the Delawares? Didn't they die pretty rapidly after they got here?

Answer. Yes, sir.

Question. They were not acclimated. Was that the cause of their death?

Answer. Yes, sir.

Question. Can you tell how many of them died?

Answer. I could not tell you how many died. I suppose over 100.

Question. It was common talk that they died rapidly?

Answer. Yes, sir.

Question. Why did not the Delawares, since so many of them had died, protest against the full amount of money being paid for this land?

Answer. Because they had bargained for it, and they expected to pay for every one that had been enrolled.

Question. Then they thought that it would go to their heirs that came after them?

Answer. Yes, sir.

Question. No protest was made, was there?

Answer. None at all that I know of.

Question. Do you know of any Delaware Indian living who was a chief of the nation or council of the nation in Kansas?

Answer. No, sir; I do not.

Question. They are all dead, are they not?

Answer. Yes, sir.

Question. Was not it a habit amongst the Delawares when they had something of importance to consider for the chiefs and council to make it known to them?

Answer. Yes, sir.

Question. How did they spread the news throughout the nation?

Answer. Each chief had his counselor, who would scatter the news around.

Question. There was constant visitation going on amongst the Delawares?

Answer. Yes; they did not occupy but a small piece of land; they were all together.

Question. Those questions that were being considered by the Delawares before the agreement was signed at Washington were spread out amongst the Delawares in this manner?

Answer. Yes, sir.

Question. When the Delawares came here from Kansas each one selected as much of his 160-acre plot of land as he could improve?

Answer. Yes, sir.

58 Question. Did they improve it?

Answer. They did; yes, sir; most of them.

Question. Did they build any houses, barns, fences, and so forth?

Answer. Yes, sir; fences, and some real nice houses now.

Question. What is the value of those improvements?

Answer. I do not know that I could tell you that.

Question. I suppose from a few hundred dollars to a few thousand?

Answer. Yes, sir; I think mine was worth $1,000.

Question. The Delawares that had families, and that were able to do so, took up 160 acres each for himself and 160 acres for each member of his family?

Answer. That was the custom.

Question. And that was what your father did?

Answer. Yes, sir.

Question. He had a large family, had he not?

Answer. He had four children.

Question. Was his wife along with him?

Answer. Yes, sir.

Question. So that his family, including himself, was six persons?

Answer. Yes, sir.

Question. That family of six, then, was entitled to 960 acres?

Answer. Yes, sir.

Question. When the Delawares got their land in the Indian Territory did they lump their land in one piece and hold it in common amongst themselves, or did each one hold his land in severalty?

Answer. Each one went where he liked.

Question. Did he hold his land to himself—fence it in, cultivate it for his own use?

Answer. Yes, sir.

Question. The products of the land he sold and used for himself?

Answer. Yes.

Question. You were acquainted with the government of the Delawares in Kansas?

Answer. Yes, sir; I ought to remember.

Question. How did they govern themselves there?

Answer. When I was a child they just had their chiefs, without any rules in writing; but afterwards they made laws and elected their chiefs.

Question. Just before they left Kansas for the Territory did they have chiefs and council?

Answer. Yes, sir.

Question. They kept that up until your father died?

Answer. Yes, sir.

Question. When did he die?

Answer. In 1895.

Question. Where?

Answer. In the Indian Territory.

Question. After he died what form of government succeeded the old form?

Answer. They went and selected a business committee.

Question. And that committee now exercises the same powers as the old form of government did?

Answer. Yes, sir.

Question. This committee was selected by the people?

59 Answer. Yes, sir.

Question. As neighbors of the Cherokees, were not there many Cherokees cultivating farms?

Answer. Yes, sir.

Question. A habit of these Cherokees is to take as much land as they can get hold of and improve?

Answer. Yes.

Question. The Delawares saw this every day?

Answer. Yes, sir.

Question. Is it not common talk that it is the right of Cherokee citizenship to improve all they can?

Answer. Yes.

Question. The common belief amongst the Delawares and amongst the people where you live is that people of the Cherokee nation have a right to take up unoccupied land and improve it and cultivate it and take whatever crops they raise on it?

Answer. Yes, sir.

Question. As much land as he could get and hold it?

Answer. Yes, sir.

Question. The Delawares regard that anyone has a right to take their 160 acres whether they improve it or not?

Answer. Yes, sir.

Question. The Cherokees, as a matter of fact, did take farms wherever they went; they fenced them in and used them for the time being?

Answer. Yes, sir.

Question. This is done openly throughout the Cherokee nation?

Answer. Yes, sir.

Question. And also there is a rule or law that one man can not encroach upon another's farm within a space of a quarter of a mile?

Answer. Yes, sir.

Question. This is public knowledge?

Answer. Yes, sir.

Question. When Cherokees occupied their part of the country in this manner did they go according to this rule?

Answer. Yes, sir.

Question. These answers that you have given with regard to what the Delawares in Kansas thought of this agreement that was proposed by the Cherokees, and the way they looked at it and construed it, and what was told them by the chiefs and council, apply likewise to yourself, do they not?

Answer. Yes, sir.

Question. Those things were told to you by the leaders of the Delawares personally?

Answer. Yes, sir.

Question. And you also had this understanding?

Answer. Yes, sir.

(The attorney for the defendants objects to all the foregoing questions and evidence and answers, because they are incompetent, irrelevant, and immaterial in this, that most of them are hearsay, and all of them tend to vary a written contract.)

Cross-examination by Mr. HUTCHINGS:

Question. Was the contract which was entered into between the Delawares and Cherokees, and which was reduced to writing
60 at the time, read over and explained in your hearing?

Answer. No, sir; I never went to council.

Question. Do you know of its being read to anybody?

Answer. Yes, sir; in the council it was.

Question. Was not your council given full power to make this contract?

Answer. Yes, sir; they were.

Question. Do you not know that at the time the Delawares paid an interest into the Cherokee nation the number of acres each citizen was entitled to would have amounted to nearly 1,000 acres?

Answer. I do not remember.

Question. Don't you remember that about five years ago the Cherokee nation sold to the United States over 5,000,000 acres of land.

Answer. Yes.

Question. Don't you know that it now possesses, including what the Delawares occupy, something like 5,000,000 acres?

Answer. Yes, sir.

Question. Do you know now that it is estimated upon allotment that each Cherokee would receive about 145 acres per head?

Answer. I have seen that in the papers.

Question. That is common knowledge?

Answer. Yes, sir.

Question. Would you expect the Delawares, when they paid $160 a head for 160 acres, to get any interest in land beyond that 160 acres?

Answer. Yes, sir.

Question. Can you explain, then, what you paid for anything else?

Answer. I can not tell you just the amount they paid, but they paid for a share of all the land.

Question. Tell me how they ever paid anything.

(Objected to by counsel for plaintiffs as a matter of public record. Counsel for defendants can ascertain those facts from the record of what moneys were paid by the Delawares into the Cherokee nation, which is set out in the Cherokee books in writing.)

Question. Now, Mrs. Armstrong, after the money, outside of what you paid for the 160 acres, that the Delawares contributed to the Cherokee treasury was simply put in there, was it not, to make you

Delawares equal in money with Cherokees? In other words, the Cherokees had deposited with the United States Government a national fund amounting to about $280 per head, and were you not, as Delawares, required to deposit an equal sum per head in order that in a final distribution on the basis of citizenship rights you would not share in money of the Cherokee nation alone when you had paid nothing for it?

(Counsel for plaintiffs objects to this question because it is argumentative.)

Answer. My husband used to tell us people after we came here the Cherokees objected to the Delawares because they did not have any right; that he used to tell them they paid their money into the Cherokee nation; that they were glad to get it; that we paid the money for our rights. We did not come because we had married some of their pretty girls.

Question. You have not answered my question, Mrs. Armstrong.

Answer. Because they paid for equal rights.

61 Question. I understand that all the equal rights you paid for in addition to that was about $280 per head, that sum being only an amount equal to whatever a Cherokee citizen himself was entitled of their national funds?

Answer. Everything he was worth, whether it was funds, lands, or anything else.

Question. Assuming, then, Mrs. Armstrong, that the Cherokees at that time had land enough on division to have given each citizen 1,000 acres *per capita*, under your ideas of the agreement, then, if the land and moneys had been divided within a short time after you came to this country, for your $160 you would have gotten 160 acres of land, and for your $280 in money you would have gotten back $280 in money and more than 500 acres of land clear, would you not?

Answer. Yes, sir; I suppose we would. They did that because there was an agreement that the Cherokees were to take in friendly Indians, and they did not know how many they were to take in.

Question. Then, in your agreement it was understood that the Cherokee nation could embody in its citizenship such additional friendly Indians as it saw fit?

(Objected to by counsel for the plaintiffs, because there is no mention of such a thing in the agreement, and consequently there can be no call to construe to include that which is not in any way set forth.)

Answer. The Delawares did not have anything to do with that.

Question. You just stated you did know, and I want to know whether you did or not.

Answer. Yes, sir; and they did, too.

Question. What family did you have when you moved to the Cherokee nation and which were registered upon the original roll?

Answer. Myself and husband, four children, and his mother.

Question. How much land did you take up for your family?

Answer. Just a whole lot—all we could take care of.

Question. Did you measure it by 160 acres in any way?

Answer. No, sir; just cleared up what we could as we could.

Question. Did you know of anybody who endeavored to sell the land at the rate of 160 acres exactly?

Answer. I could not tell you.

Question. Have not these Delawares made places and sold them and made other places, just exactly as any other Cherokee citizen does?

Answer. Yes, sir.

Question. Have not the places of those registered Delawares who have died since they came to this country been sold upon their death and purchased by other citizens?

Answer. Yes, sir; their improvements. Their head right was not sold.

Question. Did John Bullette's father and grandfather come to this country, do you remember?

Answer. I could not tell you.

Question. Now, Mrs. Armstrong, don't you know that there is one of the accepted principles among all Indians that lands should never be held in severalty, but should be held as common property?

(Counsel for plaintiffs objects to this question, as it is immaterial and irrelevant.)

Answer. I don't know there was anything like that about it.

62 Question. In your direct examination you state, if I remember correctly, that the Delawares were governed by a chief and council in Kansas, and that after they came to this country they were governed in the same way. Now, don't you know that ever since they have been in this country they have been exclusively governed through the national council of the Cherokee nation?

Answer. I know that they were governed by the Cherokee nation, but they went to my father for advice just as long as he lived.

Question. Was not their lands and all divided amongst their families and managed after the death of a Delaware by the courts of the Cherokee nation and in accordance with the laws of descent and distribution of the Cherokee nation?

Answer. Yes, sir; we were under the Cherokee law, of course, and the time had not come for this allotment business. That 160 acres was to come in when that time came for distribution.

Question. Then, I understand from you that you have not heretofore—you Delawares—in settling upon the public domain, paid any attention to your right to 160 acres, but that you simply desired that that right be protected in the final allotment of land?

Answer. Yes, sir.

Redirect examination by Mr. HARBY:

Question. You have never understood that you had no right to 160 acres until some people or some commission should allow it to you, have you?

Answer. No, sir.

Question. Then, by your answer to the last question of cross-examination, do you or do you not mean that the Delawares were waiting for the time of allotment for their 160 acres to be definitely divided amongst them?

Answer. Yes, sir.

Question. The way they regard it now is that they occupy their 160 acres, but that its boundaries have not been defined?

(Question objected to by attorney for defendants as leading and suggesting an answer to the witness.)

Answer. Yes, sir.

Question. Objection has been made that my question was leading and suggested an answer. Now, I ask you whether or not you understand that when the 160 acres which each Delaware purchased shall be allotted to them, and when his communal right in the land of the Cherokees shall be allotted to him, he shall get by that allotment any of the land he now occupies, or whether he will be picked up and taken to some other part of the Indian Territory and told to take his land there?

Answer. I understand the Delawares will take it where they want it.

Question. In other words, the farms which they have taken up will be dealt out to the extent of 160 acres and their additional rights in the lands of the Cherokees, too?

Answer. Yes, sir.

Question. You never had any other understanding but that?

Answer. No, sir; never had.

Question. You stated on cross-examination something about there being an understanding amongst the Delawares that the Cherokees could bring in other friendly Indian tribes. Did you under-
63 stand that the Cherokees could do that by virtue of an agreement with the Delawares or that they could do it just because they arranged to do it.

Answer. The Delawares did not have anything to do with it.

Question. Did you mean to say, and do you now understand it, that in this agreement of 1867 there was any understanding that the Cherokees could bring in other friendly tribes to share in the communal rights which the Delawares thought they had purchased, or did the Delawares think when they purchased this they would have it forever amongst themselves?

Answer. They bought it for themselves, of course.

Question. Was that the understanding amongst the Delawares that this agreement of 1867 gave the Cherokees the right to bring into the Cherokee nation, without the consent of the Delawares, any

number of other people that they might desire to share in their lands and thereby lessen the proportionate amount of interest of the Delawares in the land?

Answer. I could not tell you.

Question. Do you understand that the Cherokees have a right to bring in as citizens other people who were not theretofore citizens?

(Counsel for defendants objects to this question because it is a matter of law and the witness is incompetent to define it.)

Answer. I do not know how much right they have any more than their own law.

Question. They have no right other than their own law by virtue of any agreement with the Delawares, have they?

Answer. No, sir.

Question. Have you ever intended to state that there was an agreement with the Delawares that gave them a right to bring any people to this country?

Answer. No, sir.

Question. Then, have you ever meant to say that there was an agreement with the Delawares that gave the Cherokees the right to bring other people into this land to share in the communal rights of this nation?

Answer. No, sir; the Delawares did not have anything to do with that.

Question. There was no agreement to that effect?

Answer. No, sir.

Question. When the Delawares purchased this communal right from the Cherokees, did they agree that the amount of their purchase should be divided up by bringing in other people later on?

Answer. No, sir; they did not.

Question. Was there ever any agreement between the Delawares and Cherokees by which it was understood that the Cherokees could deprive the Delawares of any of their property rights by bringing in others to share in them?

Answer. No, sir; they never agreed to any such a thing.

Question. Do you know of any other matter relative to this claim that would be of interest to us?

Answer. I have stated about all I do know.

MARY E. ARMSTRONG.

Sworn to before me this 7th day of December, 1898.

[SEAL.] P. H. WILKERSON,
Notary Public.

64 I, P. H. Wilkerson, a notary public in and for the northern judicial district of the Indian Territory, on the 8th day of December, 1898, at Nowata, hereby certify: That the witness, Mrs. Mary E. Armstrong, was duly and properly sworn; that the answers to the questions put to her were taken down in her presence and in my presence, and that they were read over to her and signed by her;

that at the taking of said testimony I was attended by Marx E. Harby, of counsel for plaintiffs, and Wm. T. Hutchings, attorney for defendants.

Dated at Nowata, Ind. T., December 8, 1898.

[SEAL.] P. H. WILKERSON,
Notary Public for Northern Judicial District of the Indian Territory.

Deposition of Mary C. Beysiau, for Claimants, Taken at Nowata, Ind. T., on the 7th Day of December, A. D. 1898.

Claimants' counsel, Marx E. Harby; defendants' counsel, William T. Hutchings.

The witness having been duly sworn to tell the truth, the whole truth, and nothing but the truth, relative to this case in which she is to testify, testifies as follows:

Direct examination by Mr. HARBY:

Question. Please give your name, age, residence, and occupation.

Answer. My name is Mary C. Beysiau; I am 49 years of age; I live on California creek, and am a farmer.

Question. You are one of the plaintiffs in this case?

Answer. Yes, sir.

Question. You were one of the registered Delawares in Kansas?

Answer. Yes, sir.

Question. What was your father's name?

Answer. Jim Secondine. He was chief before they sectionized the land back north. He died before that.

Question. He was chief in Kansas?

Answer. Yes, sir; he died right there.

Question. Do you remember the chiefs telling the people about the agreement the Delawares were going to make with the Cherokees?

Answer. Yes, sir.

Question. What was it they told them?

(Counsel for defendants objects to this testimony as being incompetent, irrelevant, and immaterial.)

Answer. They told them when they found a place that the Cherokees got good land and were good friends to us. They called us their grandchildren; they want us to buy their land from them.

Question. Did the chiefs say what the Delawares were to get for their money?

Answer. First, they wanted to offer it for fifty cents an acre, and finally they asked $1 an acre for it, and so we buy 160 acres of land and gave $1 an acre for it.

Question. And what else were you to get?

Answer. After we buy the land we bought the right and as much as a Cherokee got in the treasury, we put that in too to get equal

right, and if ever they divide the land we get 160 acres if they only get 40 acres. That's the way I understood it.

65 (The counsel for the defendants objects to all of the foregoing answer and asks its withdrawal from the case because it is incompetent and an attempt to vary the terms of a written contract.)

Question. Do you mean to say that for the payments which the Delawares made to the Cherokees the Delawares were to get 160 acres of land and in addition to that were to get a Cherokee communal rights both in lands and money?

Answer. Yes, sir; that's what I mean.

Question. The Delawares paid for those things?

Answer. Yes, sir; by their own money.

Question. Paid for the land and put money into the treasury besides?

Answer. Yes, sir; and we had money left, too.

Question. And is that what they stated to be the terms of the agreement? Is that what the chiefs told the people it would be in 1866?

Answer. Yes, sir.

Question. And then the agreement was signed in 1867?

Answer. Yes, sir.

Question. And this is what you heard from your father, Jim Secondine?

Answer. No, sir; he died before that. I knew it from the other ones. Journeycake is my second cousin. I knew what was going on all the time.

Question. There was a roll made of the Delawares that were coming here?

Answer. Yes, sir.

Question. The agent did that?

Answer. Yes, sir.

Question. Did any of them die before they came here?

Answer. Yes; a good many died.

Question. After they came here, before May, 1869, how many do you think died?

Answer. A good many got sick. Some got well and some died.

Question. About how many?

Answer. That's one thing I could not tell you.

Question. Did your mother die?

Answer. Yes; she was one of them that died.

Question. The people that came here selected their farms, did they not?

Answer. Yes, sir.

Question. Have you a farm?

Answer. Yes, sir; I have a farm and claims it to be my own and nobody else's.

Question. Did you improve your farm?

Answer. Yes, sir; I did.

Question. What is the value of it?
Answer. I could not say.
Question. Is it worth $1,000?
Answer. Yes. I try to live because I thinks it belongs to me when I worked for it.
Question. The other Delawares have built houses, fences, and barns on their land, have not they?
Answer. Yes.
Question. Set out trees and planted crops?
Answer. Yes, sir.
66 Question. Did they also build churches and schoolhouses?
Answer. Yes, sir.
Question. Did the Delawares have a form of government in Kansas amongst themselves? Did they have chiefs and council?
Answer. Yes, sir.
Question. They had that way of government up to the time that Chief Journeycake died in the Indian Territory?
Answer. Yes, sir.
Question. After he died they had a business committee?
Answer. Yes, sir.
Question. How many was on that business committee?
Answer. I believe it is five.
Question. And these five were selected by the Delaware people?
Answer. Yes.
Question. From amongst the Delawares?
Answer. Yes, sir.

Cross-examination by Mr. HUTCHINGS:

Question. How much land did you settle when you came to this country?
Answer. I never measured the land when I settled. I thought it belonged to me and commenced to farm.
Question. Don't you know about how much?
Answer. No; because it was not sectionized at that time. I said but if ever it becomes sectionized I want what my grandchildren gets after I put my 160 acres aside. We wanted to send our children to school at Tahlequah and did send them there, but they sent them back and said they had no room, and they had to come back afoot. My boy did that. We tried, too, to get children into the orphan asylum but they would not take them.
Question. Then this 160 acres business, you only take that into consideration when you come to allotment.
Answer. I take that and put it one side and I want more in addition to that.
Question. Do you want any more than you have fenced up and cultivated now?
Answer. When it comes to sectionize out the land, when it comes to that, I take just as much as I want, and if the Cherokee gets only 10 acres, I want that, too.

Question. How much have you got fenced up and cultivated now?

Answer. I could not really tell you how many acres.

Question. Just guess at it.

Answer. Oh, 700 acres in one place.

Question. Any more?

Answer. My husband has got another place.

Question. How much has he got?

Answer. You better ask him.

Question. Well, just guess about it. About how much do you think, Mrs. Beysiau?

Answer. I ain't going to tell you, because I don't attend to that. I never go around. If you had let me know that way back I would have gone and measured it.

Question. Is his place as much as yours?

Answer. A little bigger.

67 Question. Then, if I catch the drift of your remarks, you and your husband went to work and settled all the Cherokee domain that you could?

Answer. I could not understand what he means.

Question. That is, you settled all the land you could get hold of?

Answer. We had been working away making farm so that we could get living out of it. We did not want spite out of nobody.

Question. You settled that land just like every other citizen did?

Answer. I settled it because I bought it.

Question. You settled on a heap more than you bought?

Answer. I claimed more.

Question. Have you ever made any places and sold them?

Answer. No, sir; I did not want to sell my places. I want them for my heirs. If I rent it to white man, I want them to farm it and give my part. I am stingy.

Question. About what is the average yearly income from your land?

Answer. Sometimes $1,000, when the crop was good, and sometimes when the season not good I did not get nothing much.

Question. Did that Delaware council you speak of convening in this country ever pass any laws?

Answer. Since they were here? We have no laws, but we have a custom. They govern their affairs as a Delaware people.

Question. Were not you governed by the laws and customs of the Cherokee nation after you came here?

Answer. I did not read of it.

Question. If you had killed a man they would have hung you under Cherokee law, would they not?

Answer. I don't know. Never paid any attention about that.

Redirect examination by Mr. HARBY:

Question. When the Delawares came here and had children, or when the men had wives, did not they take up 160 acres for each member of the family?

Answer. Yes, sir.

Recross-examination by Mr. HUTCHINGS:

Question. And that accounts for some of the Delawares having such big farms?
Answer. Yes, sir; that's it.
Question. You say you did not measure your land?
Answer. I did not measure my farm. That's correct.
Question. How did you get at that 160 acres?
Answer. Because I bought it.
Question. Did you settle it?
Answer. Yes, sir; I live there right now.
Question. On 160 acres?
Answer. It is more than 160 acres, my farm is.
Question. What did you tell him, then, for that you settled at the rate of 160 acres a head?
Answer. Well, because I had lots of children at that time that are dead now, but I claim all that. It belongs to me to-day, and I hope I will get it all.
Question. Don't you know that you just settled this land over here like any other Cherokee citizen, and that you settled just as much or just as little as you were able to settle without any
68 regard to any 160 acres, expecting that the 160 acres would be taken care of when the land was allotted?
Answer. No, sir; I ain't settled down like the Cherokees, because I want more than they get.
Question. How much did you settle on in the beginning?
Answer. Was not I told you I never measured it?
Question. How much did you think you were settling on?
Answer. I did not think at that time how much I was settling on. I make my farm, and I think that belongs to me and our grandchildren.

Redirect examination by Mr. HARBY:

Question. Do you know of anything else that would be of interest to us in this case?
Answer. No, sir; I think that's all.

Examination concluded.

MARY C. BEYSIAU.

Sworn to before me this 7th day of December, 1898.
[SEAL.] P. H. WILKERSON,
Notary Public.

I, P. H. Wilkerson, a notary public in and for the northern judicial district of the Indian Territory, on the 8th day of December, 1898, at Nowata, Ind. T., hereby certify that the witness, Mary C. Beysiau, was duly and properly sworn, that the answers to the questions put to her were taken down in her presence, and that they were read over to her and signed by her; that at the taking of said

testimony I was attended by Marx E. Harby, of counsel for plaintiffs, and William T. Hutchings, attorney for defendants.

Dated at Nowata, Ind. T., December 8, 1898.

[SEAL.] P. H. WILKERSON,
Notary Public for Northern Judicial District of the Indian Territory.

Deposition of Henry Armstrong, for Claimants, Taken at Nowata, Ind. T., on the 7th Day of December, A. D. 1898.

Claimants' counsel, Marx E. Harby; defendants' counsel, William T. Hutchings.

The witness having been duly sworn to tell the truth, the whole truth, and nothing but the truth, relative to this case in which he is to testify, testifies as follows:

Direct examination by Mr. HARBY:

Question. You are one of the plaintiffs in this case, are you not?

Answer. Yes, sir.

Question. Now, Mr. Armstrong, please give your name, age, occupation, and place of residence.

Answer. My name is Henry Armstrong; I am 56 years of age; I am a farmer, and I live at Coody's bluff.

Question. What relation are you to Mrs. Mary E. Armstrong?

Answer. She is my sister-in-law.

Question. You are one of the Delaware Indians who lived on the reservation in Kansas?

69 Answer. Yes, sir.

Question. This agreement, which we cite in our petition, between the Delawares and Cherokees, which was signed in Washington in 1867—tell us when you first heard of it. How long before it was signed?

Answer. Oh, sometime in July, I think.

Question. They talked about it in 1866, did not they, when the delegation returned from Washington?

Answer. They talked about it in 1863—commenced talking about it.

Question. A delegation was sent from the Delawares to the Indian Territory to look over the land?

Answer. Yes; but the first time they did not get down here.

Question. After they got down here, they sent a delegation to Washington, and this delegation came back in 1866?

Answer. Well, I do not know that it had anything to do with this case. It is different, entirely. They went to Washington to dispose of land they had in Kansas.

Question. And each Delaware got $200 for the 80 acres they owned in Kansas?

Answer. Yes, sir.

Question. And after they disposed of that land they had to go somewhere else?

Answer. No; they did not sell it right off, but they knew where they could dispose of it at the time.

Question. The Delawares in Kansas owned their own land, did they not?

Answer. Yes, sir.

Question. Each Delaware owned his place?

Answer. Yes, sir; 80 acres.

Question. Had a right to do with it as he pleased?

Answer. The chiefs and council had.

Question. The people gave the chiefs and council a right to represent them in disposing of this land to the United States Government?

Answer. Yes.

Question. You were well acquainted amongst the Delawares in Kansas—were you or were you not?

Answer. Yes; I knew most of them.

Question. Were you a relation of any of the chiefs?

Answer. One of them.

Question. Who was that?

Answer. Charles Journeycake.

Question. Did you know the chiefs?

Answer. Yes, sir.

Question. Talked with them?

Answer. Yes; once in awhile.

Question. When the question of removing came to be considered by the people, how did the chiefs and council make it known to them?

Answer. They generally called the people together and told them what they had done. That's all I know about it.

Question. This agreement between the Delawares and Cherokees was made known to the people in 1866 before it was finally signed, was it not?

Answer. Well, they came once in March, 1866, I think, to make a trade with the Cherokee nation, and I think they got back sometime in June, 1866.

70 Question. And when they got back they made it known to the people?

Answer. Yes, sir.

Question. What did they say this agreement was?

Answer. They said, now the people will have to emigrate into the Cherokee nation and become one of the Cherokees, and they have bought 160 acres of land for each one, and they paid equal proportion into the Cherokee nation that the Cherokee nation had at the time.

Question. Did they say how the Delawares would own this land—this 160 acres?

(Attorney for the defendants objects to the question as incompe-

tent, irrelevant, and immaterial, particularly so because it is matters about which the witness seeks to testify that was reduced to writing, and that a written contract can not be varied by parole testimony.)

Answer. Well, they talked about it this way: That the Delawares were to get 160 acres, and if the Cherokees—if they only had 40 acres a head—still the Delawares would get 160 acres. That's the way they talked about it. I don't know how true it was.

Question. You mean to say that, never mind how much the Cherokees got out of their communal rights, the agreement with the Delawares gave the Delawares at least 160 acres. Is that it?

Answer. Yes, sir; that was what was said by the chiefs and council.

Question. What right, with regard to the length of ownership, was the Delawares to have in this land?

Answer. I did not hear, but I suppose they got 160 acres. That's what they talked about.

Question. Now I must explain to you, Mr. Armstrong, because your answer did not convey its meaning very clear. Did this council and chiefs explain whether the Delawares would own the land forever, and would it go to their children when they died? Was that the explanation?

(Counsel for defendants objects to this question because a written agreement speaks for itself.)

Answer. I did not hear anything remarked very much about how long they could own the land. They only said they had bought 160 acres for each one. That's all I know.

Question. The Cherokees claim that if a Delaware dies this 160 acres that he bought reverts or goes back to the Cherokees. His children do not get it. Did you understand the explanation of the council that way, or different?

Answer. I never heard until lately—never heard it that way before.

Question. Did the council explain it in that way?

Answer. No.

Question. How did they explain it?

Answer. Well, they explained it this way: That they had bought 160 acres; that if the Cherokees only got 40 acres, they would get 160 acres for each one. That's all I know.

Question. Suppose a Delaware was to die before he came here who would get this land—his 160 acres?

Answer. Well, they bought 157,600 acres of land—why, the Delawares would get it.

Question. Were you married when you left Kansas?

Answer. Yes.

Question. Had any children?

Answer. Yes; had one.

71 Question. Did they come over here with you?

Answer. Yes.

Question. Suppose you had died before you came here, who would have got your land?

Answer. Well, if the chief and council had bought the land in the Cherokee nation, 157,600 acres, and paid $157,600 for it, of course my family would get the land that I had, I suppose.

Question. You understand also that the Delawares had to pay a sum of money to the Cherokees besides what they paid for this land?

Answer. Yes.

Question. And what rights was it explained to the people by the chiefs and council that the Delawares would get with regard to Cherokee citizenship, in addition to their owning the land—that is, the 160 acres apiece?

Answer. Well, they said they paid in so much money to the national council and so much to the school funds. That's all I heard.

Question. Did they explain that the Delawares would get Cherokee citizenship?

Answer. Yes.

Question. And did they say what rights they would have with the Cherokees?

(Counsel for defendants objects to this question because a written agreement speaks for itself.)

Answer. Well, this money had been paid in to get equal rights with the Cherokee nation.

Question. You mean they were to have equal rights in everything, in addition to this 160 acres?

Answer. Yes, sir.

Question. When you came over here did you select your land?

Answer. I did.

Question. Did you improve it?

Answer. I did.

Question. What did you do to it?

Answer. I opened up a farm—built houses on it, and fences?

Question. What is the value of your improvements?

Answer. Oh, I suppose about $6,000, anyway.

Question. Have you been a farmer ever since you came here?

Answer. Not exactly.

Question. A great part of the time?

Answer. Yes.

Question. You are acquainted with the value of farm improvements?

Answer. I think I do.

Question. Did your neighbors select their land and improve it in the same way as you did?

Answer. Yes, sir.

Question. All the other Delawares improved their land?

Answer. Yes; I see they got houses.

Question. Does each man hold his farm separate from his neighbor?

Answer. Yes, sir.

Question. Each one has his land as his individual property?

Answer. Yes, sir.

Question. Have you been around the Territory to any extent?

Answer. Oh, yes; some.

Question. You see the Cherokees cultivating their land?

72 Answer. Yes, sir.

Question. A Cherokee takes all the land that he can get, does he?

Answer. I suppose so.

Question. You see that, don't you?

Answer. I don't know; there is much difference one way or the other.

Question. You understand that a Cherokee can cultivate all the land that he can take care of, don't you?

Answer. I could not say that.

Question. When this agreement was made, or when this agreement was proposed to the people by the chiefs and council, was it understood that the Cherokees could bring in any number of other people that they wanted and lessen the communal rights of the Delawares in the land?

(Objected to by counsel for the defendants on the grounds that the contract speaks for itself, and for the further reason that it is a matter of construction of the laws of the Cherokee nation and of the treaty of 1866, which this witness is not competent to construe.)

Answer. I never heard them say about bringing anybody in.

Question. You did not understand that to be the fact, did you?

Answer. No.

Question. When you bought your communal right in the Cherokee nation you did not agree that they could be made smaller any time the Cherokees wanted?

Answer. No; the talk was we would get 160 acres.

Question. Before the Delawares came here from Kansas the agent made a roll, did not he?

Answer. Yes, sir.

Question. And before they got here a good many on that roll died?

Answer. Yes.

Question. How many?

Answer. I really could not say exactly.

Question. About 50, say?

Answer. No, not so many as that, I should think. You mean that died on the way?

Question. Before May, 1869, a good many of them died, did not they?

Answer. Oh, yes; there must have died from 80 to 100.

Question. Would not you often come across the fact that some people died right after the register was made?

Answer. I could not answer that.

Question. You understand that the Delawares had a system of government among themselves in Kansas?

Answer. You got me that time.

Question. Did they have chiefs and council in Kansas?

Answer. Oh, yes, sir.

Question. And those chiefs and council took care of the affairs of the people?

Answer. Yes, sir.

Question. And they kept up this way of doing until Chief Journeycake died, did they not?

Answer. Yes; they did.

Question. And after he died they had a business committee?

Answer. Yes, sir.

73 Question. And it does the same as the chiefs and council used to do—take care of the affairs of the people?

Answer. Yes, sir; they do.

Cross-examination by Mr. HUTCHINGS:

Question. What is the difference, Mr. Armstrong, in the way in which you Delawares settled this public domain from the way in which all the other Cherokees settled it?

(Objected to by counsel for plaintiffs because it does not appear how they were to settle, nor that Mr. Armstrong knows how they were to settle it, because there is no foundation laid for the question.)

Answer. I did not see any difference. Both parties settled where they could get land.

Question. Settled just as much as they could take in?

Answer. Yes; I believe they do.

Question. Did not the Delawares sell and trade in their improvements that they made just like other Cherokee citizens?

Answer. Yes, sir.

Question. Did they trade them off to other Cherokee citizens who were not Delawares?

Answer. I don't suppose there is much difference either way so long as they trade.

Question. When they settled on the public domain did they in the beginning or have they since at any time had regard as to whether or not they settled on 160 acres for each member of the family, or whether or not they just settled where they could get as much land as possible?

Answer. Well, I believe they settled on just as much as they could.

Question. Don't you think you have a right to give up the place you are on any time prior to allotment and go over and get you another 160 acres where you like that is not occupied by any other Cherokee citizens?

Answer. I suppose the idea would be that if I gave up my 160 acres I would go somewheres else.

Question. Do you know whether John and George Bullette's father came to this country?

Answer. No, sir.

Question. Don't you know, Mr. Armstrong, that when the heads of Delaware families have died that in many instances their improvements have been sold to Cherokee citizens and that their children have gone off and made other improvements on the public domain *of the Cherokee nation*?

Answer. Yes, I believe so, on both sides.

Question. How many chiefs did the Delawares ever have at one time?

Answer. In this country?

Question. In any?

Answer. In Kansas they had two.

Question. Had two at one time?

Answer. Well, I take that back; they had three.

Question. All equal?

Answer. Yes; it seems they had three clans or bands and each had a chief.

Question. Did the council of the Delawares ever attempt to pass any laws for your government after they came to this country?

Answer. No, sir; only what invested fund there was; that's all.

74 Question. What you people paid into the Cherokee treasury was just to make you equal in the national fund, school fund, and other funds in the Cherokee nation?

(Objected to by counsel for plaintiffs because it is already answered that the payments made to the Cherokees equaled in everything, besides giving them 160 acres.)

Answer. I have answered that once.

Question repeated.

Answer. Well, that's the way I understood it was then.

Question. Each Cherokee citizen had as an invested fund about $280?

Answer. I do not know.

Question. Did not you people pay in about $280 apiece?

Answer. We paid $284.10; that's what it was.

Question. That was estimated to make you equal in the national fund? Don't you know how much each head paid in?

Answer. No, sir.

Question. You paid in $160 on land per head, which you say entitles you to 160 acres of land?

Answer. Yes, sir.

Question. You got by that deal that Cherokee citizenship and more than 500 acres of land per head; can you state what you paid to get that equality in the land?

Answer. Well, I understand it this way: If we divided up at the time we came in, we would get a lot more land.

Question. You would have got an awful fine deal?

Answer. Yes, sir.

Question. You have already gotten back about $295 in money per head, have you not, from the Strip payment?

Answer. Yes, but we ain't got it all yet.

Question. You have not got it yet?

Answer. No.

Question. Why have you not got it?

Answer. The Cherokee nation owes us $12,000 yet.

Question. How much did you get per head?

Answer. Well, first $200.37; then $29.17, I think, the last time.

Question. Then you have got about $200 interest in the invested fund of the Cherokee nation now, have you not, after the debts are paid?

Answer. Well, I don't know about that.

Question. Don't you know the Cherokee nation has got over $5,000,000 of invested funds now?

Answer. I did not hear they had that, but I heard they had some invested funds. I don't know how much.

Question. If they have got that much, and you get 160 acres of that land, you would still be considered ahead on your deal, won't you?

Answer. I don't know whether we would or not; owing to how much interest there would be. I suppose the invested fund would increase the same as the Cherokee nation would do.

Question. Do you think that your invested fund ought to bear its proportion of all the expenses of running the Cherokee nation?

(Counsel for plaintiff objects to the foregoing question because it is immaterial, irrelevant, and incompetent also.)

Answer. Well, I could not really answer that point.

Question. Do you expect to come over here and get into this nation as a part of it and have the nation bear all of your expenses?

75 Answer. Well, I tell you that much: The Delawares have got no benefit from the expenses of the Cherokee nation.

Question. Did not the Cherokee courts administer upon the estates of the deceased Delawares?

Answer. Well, sometimes.

Question. Did they not prosecute the men that stole your property?

Answer. Well, I guess they have; I don't really know about that.

HENRY ARMSTRONG.

Sworn to before me this 7th day of December, 1898.

[SEAL.] P. H. WILKERSON,
Notary Public.

I, P. H. Wilkerson, a notary public in and for the northern judicial district of the Indian Territory, on the 8th day of December, at Nowata, hereby certify that the witness, Henry Armstrong, was duly and properly sworn; that the answers to the questions put to him were taken down in his presence and in my presence, and that they were read over to him and signed by him; that at the taking of said testimony I was attended by Marx E. Harby, of counsel for plaintiffs, and William T. Hutchings, attorney for defendants.

Dated at Nowata, Ind. T., December 8, 1898.

[SEAL.] P. H. WILKERSON,
Notary Public for Northern Judicial District of the Indian Territory.

Deposition of Stephen Miller, for Claimants, Taken at Nowata, Ind. T., on the 7th Day of December, A. D. 1898.

Claimants' counsel, Marx E. Harby; defendants' counsel, William T. Hutchings.

The witness, having been duly sworn to tell the truth, the whole truth, and nothing but the truth relative to this case in which he is to testify, testifies as follows:

Direct examination:

Question. Please give your name, age, residence, and occupation.

Answer. My name is Stephen Miller; I am 35 years of age; I live at Delaware, Ind. T., and I am a farmer.

Question. You are one of the Delawares suing in this case?

Answer. Yes, sir.

Question. You are one of the registered Delawares in Kansas, Mr. Miller?

Answer. Yes.

Question. You left there to come over with other Delawares to the Cherokee country?

Answer. Yes, sir; I came with them.

Question. How many are there in your family?

Answer. Seven. I lost one of my children Sunday morning.

Question. How many acres have you got in cultivation?

Answer. Well, at home—I will just have to guess at it—over 200 acres, and I have got 150 inclosed, in addition to that.

76 Question. You have been all over the land now occupied by the Delawares?

Answer. Pretty much.

Question. You are pretty well acquainted?

Answer. Yes.

Question. Have the Delawares improved the land that they occupy?

Answer. Yes.

Question. What is the value of the improvements on your land?

Answer. Why, I suppose it would be worth about $1,500. I would not take that much for it. It would be worth more than that. I would not take $4,000 of any man's money for it.

Question. How does the value of the Delaware improvements run—that is, improvements on the various farms owned by the Delawares; how much are they worth as a rule?

Answer. Well, they run from $100 up to $1,000, and more, too.

Question. There is not any of them worth as little as $100?

Answer. No; you would not find any.

Question. As a rule you don't find them worth as little as $100?

Answer. No; not that small—not less than $400 to $500. That is about the least they could go.

Question. Now, there are churches and schoolhouses on the Delaware lands?

Answer. Yes.

Question. Built by the Delawares?

Answer. Yes.

Question. Do you know who built the schoolhouse at California creek?

Answer. Yes; I am the man that built it.

Question. How much did you subscribe to it?

Answer. Must have been between $50 and $70; there were three of us put it up.

Question. The two schoolhouses at Caney, were they built out of Delaware funds also?

Answer. Yes.

Question. That is to say, the agent who distributed the funds was instructed to retain enough to pay for the house?

Answer. Yes, sir; that's right. That house on Caney had been built a good while. I was pretty small, and don't know all the particulars of how it was paid for, but I know it was paid for by the Delawares.

Question. How much did these houses cost?

Answer. One house cost $800, I believe, and the other house, I believe, I was told it was worth $600; some ways along there.

Question. There is a pay house at Alluwe belongs to the Delawares?

Answer. Yes.

Question. The Delawares have an organization separate from the Cherokees?

Answer. Yes.

Question. Have a business committee of their own, have they not?

Answer. Yes.

Question. Did you ever speak to a member of the Cherokee board of education about giving the Delawares a school?

Answer. Yes; I saw Mr. Butler, the chairman of the board, at the freedmen payment. I asked him about having a public
77 school; told him we had the house completed and everything—all we lacked was to have a school granted to us by the board.

Question. What did he say?

Answer. He told me I would have to make out an application and send it down; that we had to have so many scholars—13 or 14—and we would get a school.

Question. You asked Mr. William Adams to write for you?

Answer. Yes; after I got tired waiting on him.

Question. Did you get a reply to that letter?

Answer. No, sir; never even answered the letter.

Question. How many children of citizen Delawares go to that school?

Answer. I suppose about 20, maybe 25.

Question. Do you know of anything else that would be of interest in this case?

Answer. Not just now.

No cross-examination.

STEPHEN MILLER.

Sworn to before me this 7th day of December, 1898.

[SEAL.] P. H. WILKERSON,
Notary Public.

I, P. H. Wilkerson, a notary public in and for the northern judicial district of the Indian Territory, on the 8th day of December, 1898, at Nowata, Ind. T., hereby certify that the witness, Stephen Miller, was duly and properly sworn; that the answers to the questions put to him were taken down in his presence and in my presence, and that they were read over to him and signed by him; that at the taking of said testimony I was attended by Marx E. Harby, of counsel for plaintiffs, and William T. Hutchings, attorney for defendants.

Dated at Nowata, Ind. T., December 8, 1898.

P. H. WILKERSON,
Notary Public, Northern Judicial District of the Indian Territory.

Deposition of William Adams, for Claimants, Taken at Nowata, Ind. T., on the 7th Day of November, A. D. 1898.

Claimants' counsel, Marx E. Harby; defendants' counsel, William T. Hutchings.

The witness, having been duly sworn to tell the truth, the whole truth, and nothing but the truth relative to this case in which he is to testify, testifies as follows:

Direct examination by Mr. HARBY:

Question. Please give your name, age, residence, and occupation.

Answer. My name is William Adams; I am 64 years of age; I live at Alluwe, Ind. T., close to the post-office; I am a minister of the gospel.

Question. How long have you been a minister, Mr. Adams?

Answer. Thirty years last month.

Question. What church?

Answer. Missionary Baptist church.

78 Question. You are one of the Delawares that lived in Kansas?

Answer. Yes, sir.

Question. When was it that you first heard of the Cherokees wanting the Delawares to come down into the Territory?

Answer. Well, it was along in 1863 and 1864.

Question. The Cherokees came up there to see the Delawares?

Answer. Right up to our reservation. The first time they came up, some of them, as refugees during the civil war. I do not know just when they came. We called our people together about this thing.

Question. What did they say?

Answer. They learned that our people were about to change for another location and buy their homes somewhere else, giving up that country up there. We were about to give it up, and this thing was known to them by our passing their country on our way south to the Washita, looking for a location. Some of the Delawares are down there now. I made one trip. Our head chief and second chief were along with me. On our way going through this country we would meet Cherokees and they bantered us to buy land from them. One inducement to us to buy land here was that it was a milder climate than it was in Kansas. We would call our headmen together and talk the matter over.

Question. What did they say?

Answer. That they came here as friends in Indian fashion to talk about this thing and called the Delawares their grandfathers.

Question. That was significant in a friendly talk?

Answer. Yes.

Question. They seemed to regard the Delawares as a more ancient people?

Answer. Yes, sir.

Question. Now, tell the proposition that the Cherokees made to the Delawares when they called them together in 1862.

Answer. These Cherokees, when they came up there, when they began to see that it was possible our people might make a deal with the Cherokee nation, would come and talk with and try to get us to buy this land. I know this, that everything favorable they were willing to do, and they did ask the Delawares to buy the land.

Question. Did not they offer the land here at first for 50 cents an acre and then raise it to $1 if the communal right was included?

Answer. I believe that's it. They wanted it understood, not thinking that a bargain would be concluded there, but they wanted to impress on the minds of people that they would let this land go as a public land at 50 cents an acre.

Question. But when they came to consider having also the com-

munal rights—the rights of citizenship—they wanted to raise the price to $1 an acre?

Answer. Yes, sir; it was included in that way.

Question. There were many talks with the Cherokees?

Answer. Yes, sir; for quite a time.

Question. How long were they talking over this matter?

Answer. They talked along from 1863–64–65 until the treaty was effected.

Question. That was quite a long time?

Answer. Yes, sir.

79 Question. Now, finally, it came down to when the Delaware delegation returned from Washington in 1866, and this delegation explained to the Delaware people. What was the definite proposition made by the Cherokees at Washington?

Answer. No more than just what the treaty was.

Question. Now, what did they explain the treaty was to be?

Answer. I might not be able to call it to the very letter, but can quote it in substance. In the first place, when the Cherokees saw that our people wanted the best land and good land, we let go of very good land, good homes, good country in Kansas. Now, to better ourselves, we thought probably the best thing would be to comply with the wishes of those Cherokee friends, being, as they were, up there and bantered us for this trade. But there was a kind of a check for a while when it came to this question of $1 an acre after we favored them that we would buy land from them and then raise on it when they saw we wanted good land, a good home; but it was our grandchildren, and we thought we better pay at $1 an acre, and our men had a long talk about it. Some objected a while, but finally all agreed to it. They objected to the price, but after it was distinctly understood that it would include the communal rights they thought best to pay that.

Question. And one consideration was that by paying the extra price the children would get the 160 acres after they themselves would die?

Answer. They thought that it would bring in all those that would get land, but at the same time those children that were born here would be the same as a native-born Cherokee.

Question. The Delawares that came from Kansas would also get Cherokee citizenship?

Answer. Yes, sir.

Question. Would have communal rights?

Answer. Yes, sir.

Question. All this was in addition to the 160 acres of land?

Answer. The 160 acres of land that we bought was exclusively Delaware land.

Question. The idea was that the Delawares would have exclusively 160 acres apiece, and in addition to that would have what?

Answer. In addition to that we would have equal rights with the Cherokees.

Question. Equal rights in what?

Answer. In land and funds which belonged to the Cherokees.

(Attorney for the defendants objects to all of the foregoing questions and answers and asks that they be withdrawn from the consideration of the court because they are incompetent, irrelevant, and immaterial as tending to vary by parole evidence a plain, unambiguous, written contract.)

Question. Now, Mr. Adams, these facts which you have just related are within your personal knowledge?

Answer. Yes; they are just the facts and I have never known it any other way.

Question. Now, these facts, what the agreement carried with it, was explained by the chiefs and council to the Delawares in 1866?

Answer. Yes, that so; that's right.

Question. And thereafter the agreement was signed?

Answer. That's right.

Question. When they were satisfied with the explanation the agreement was signed?

Answer. Yes.

80 Question. When this agreement was signed they sold their land in Kansas, through the United States Government, to some corporation, at $2.50 per acre?

Answer. Yes, sir; to the railroad company.

Question. Were there not other places where the Delawares could have gone where the land was offered to them cheaper?

Answer. Yes, sir.

Question. What places?

Answer. Well, in the Creek country.

Question. Were there others?

Answer. Yes, sir; in the Chickasaw country.

Question. What could they get it for there?

Answer. Oh, for a song; for 30 to 40 cents an acre.

Question. Now, you know most of the Delawares?

Answer. Yes.

Question. Been round amongst them?

Answer. Yes.

Question. Your vocation as a preacher has brought you in personal contact with them?

Answer. Yes, sir.

Question. You have spoken to them?

Answer. Yes, sir.

Question. You have heard them talk over the matter of this treaty?

Answer. Yes.

Question. And they understood it and spoke of it in the way you have set forth above?

Answer. Yes, sir.

Question. Now, you know a list was made of everybody that was coming here?

Answer. A list was made of those that elected to come over in this country.

Question. Did everybody get there?

Answer. With the exception of a few.

Question. After they got here and up to May, 1869, did not a good many of them die?

Answer. Yes, sir.

Question. Why did not the Delawares object to pay this money in full when so many of them had died?

Answer. How did you mean that?

(Question repeated.)

Answer. Because they were not that kind of people; whenever they agreed to do anything they were going to carry it out. They had agreed to pay for what was on the list and they carried that out.

Question. Who was to get the land of the dead people?

Answer. The friends and descendants—the heirs.

(Counsel for defendants objects to the answer and question because the witness is not competent to construe a written contract which speaks for itself.)

Question. Now, you know that in 1863 a delegation was sent by the Delawares to look at this land in response to the solicitation of the Cherokees?

Answer. Yes, sir; I was one of those parties.

Question. Do you know the difference between holding land in common and each one holding his own land?

81 Answer. Well, holding land in common belongs to the people, but each one holding his own land is a question for allotment.

Question. Did the Delawares expect for each one to hold his own land?

Answer. Yes, sir; that was the understanding.

Question. They had their own land in Kansas?

Answer. Yes, sir; we did.

Question. In the latter part of their life, before they moved to the Cherokee nation, it was the habit for each one to hold their own land?

Answer. Yes, sir.

Question. And that was one of the considerations of their coming over here?

Answer. Yes, sir.

Question. In Kansas the Delawares had a definite way of governing themselves?

Answer. Yes, sir.

Question. And they had a council and chiefs?

Answer. Yes.

Question. Did they have one supreme chief, or more than one?

Answer. They had a head chief and then assistant chiefs.

Question. Before they came to the Indian Territory Chief Journeycake was head chief, was he not?

Answer. No, sir; Chief John Connor was head chief, and Journeycake was assistant chief. The treaty shows that.

Question. They kept up this system of government after they came to the Indian Territory, did they not?

Answer. As near as we could.

Question. Who was chief after Connor died?

Answer. Journeycake was last chief after Chief Connor died.

Question. After he died they had a committee to take care of their affairs?

Answer. Yes, sir; they were chosen by the people.

Question. This was called the business committee?

Answer. Yes, sir.

Question. Did not they have a pay house?

Answer. Yes, sir.

Question. Is it still in existence?

Answer. Yes, sir.

Question. Who built that?

Answer. The Delawares did, from Delaware funds.

Question. Did the Delawares build schoolhouses also and churches?

Answer. Yes, sir.

Question. And they are still standing?

Answer. Well, the first church was taken down by a storm. Two or three schoolhouses are still standing.

Question. You watched these things pretty closely?

Answer. Yes, sir.

Question. Being a minister, you saw everything mostly that was going on amongst those people?

Answer. Yes; I have occupied the schoolhouses and churches both as a minister.

Question. Did you ever hear of the Cherokees building schoolhouses for the Delawares?

Answer. No, sir.

82 Question. Did you ever hear of any schoolhouse the Cherokees gave to the Delawares?

Answer. No, sir.

Question. Did you ever apply to the Cherokees for a school-teacher for a schoolhouse and not get her?

Answer. Yes, sir.

Question. When was that?

Answer. That has been a while ago. There is one schoolhouse over here at Caney and another in my neighborhood, Alluwe, and one at Coody's bluff, and the teachers were granted conditionally that just the moment we failed to give the average attendance that the law required we forfeited the school, and then it was given back to some other community.

Question. Was ever a teacher refused when the average attendance was all that the law requires?

Answer. There is something like that up here now.

Question. Give that case.

Answer. The Delaware schoolhouse at California creek.

Question. Did you ask for a teacher for that schoolhouse?

Answer. Yes, sir.

Question. How many pupils were there when you asked for it?

Answer. Twenty to 25; about 25.

Question. That schoolhouse was built by private subscription?

Answer. Yes; from the Delawares.

Question. And you asked for a teacher for that schoolhouse and did not get one?

Answer. Yes; I applied to one of their board and did not get any reply.

Question. You wrote to Mr. Butler, did you not?

Answer. Yes, sir.

Question. There is a school in your neighborhood the same way, is there not?

Answer. Yes, sir.

Question. And one at Whiteoak the same way?

Answer. Yes, sir; same way. They did grant one at Whiteoak, but they moved it farther east away from Whiteoak.

Question. Is not there one at High Prairie same as the others?

Answer. Well, they did have one. It is in sight of some Delawares. It is run by private subscription; still it is within reach of some Delawares, and if it was a public school it would be patronized by the Delawares, but it is not a public school.

Question. There are three churches that were built by the Delawares, are not there?

Answer. Yes, sir; the first one was built out of the Delaware fund and the other two by private subscription.

Question. Were the subscribers all Delawares?

Answer. Yes, sir; pretty much.

Question. Did you understand that the Delawares paid two separate amounts to the Cherokees?

Answer. Yes, sir.

Question. One of those payments was for the land they had bought and the other was a proportionate payment to national fund?

Answer. Yes, sir.

Question. What was it understood that those payments,
83 taken together, entitled them to? What did they get for those payments from the Cherokees?

Answer. They got 160 acres of land for each Delaware exclusively and equal rights with the Cherokees besides.

(Counsel for defendants objects to the answer and question and asks that they be withdrawn from consideration in this case, for the same are incompetent, irrelevant, and immaterial and seek to construe a plain, unambiguous contract in writing.)

Question. In addition to holding this 160 acres of land, these payments entitled them to have rights of citizenship and all other communal rights both in land and in money with the Cherokees?

Answer. That's right.

Question. When this agreement was made, was anything said about the Cherokees having the right to bring in other people to share in these communal rights?

Answer. I did have no such knowledge. We did not know anything of that—only Cherokee people that's living right here.

Question. Do you know of anything else about this case?

Answer. No, sir.

No cross-examination.

WILLIAM ADAMS.

Sworn to before me this 7th day of December, 1898.

[SEAL.] P. H. WILKERSON,
Notary Public.

I, P. H. Wilkerson, a notary public in and for the northern judicial district of the Indian Territory, on the 8th day of December, 1898, at Nowata, Ind. T., hereby certify that the witness William Adams, was duly and properly sworn; that the answers to the questions put to him were taken down in his presence, and that they were read over to him and signed by him; that at the taking of said testimony I was attended by Marx E. Harby, of counsel for plaintiffs, and William T. Hutchings, attorney for defendants.

Dated at Nowata, Ind. T., December 8, 1898.

[SEAL.] P. H. WILKERSON,
Notary Public for Northern Judicial District of the Indian Territory.

Deposition of John G. Pratt, for Claimants, Taken at Kansas City, Kans., on the 8th day of December, A. D. 1898.

Claimants' counsel, Marx E. Harby; defendants' counsel, William T. Hutchings.

The witness having been duly sworn to tell the truth, the whole truth, and nothing but the truth relative to the case on which he is to testify, testifies as follows:

Direct examination by Mr. HARBY:

Question. What is your name, age, place of residence, and occupation?

Answer. John G. Pratt; I am 84 years old and reside in Wyandotte county, Delaware township, Kans.

84 Question. Please state if you have any, and if any what, interest, direct or indirect, in this claim, and whether and in what degree you are related to the plaintiffs.

Answer. I have no interest in any way and am no relation to the plaintiffs.

Question. You were at one time Indian agent for the Delaware agency in Kansas, were you not?

Answer. Yes.

Question. Please state when.

Answer. From 1864 to 1868.

Question. Your commission commenced in April, 1864?

Answer. Yes.

Question. Where did you reside in Kansas when you were Indian agent?

Answer. Well, where I do now, and it was then the agency and went by that name—the Delaware agency.

Question. What is it called now?

Answer. Just a farmhouse.

Question. Is it not Delaware agency?

Answer. Yes.

Question. And your post-office is Piper, Kans.?

Answer. Yes; either that or Bonner Springs. We have a delivery there or at Piper.

Question. When did the question of moving the Delawares from Kansas first come to your attention? And please state as near as you can the circumstances.

Answer. They were asked to go in 1863 by the Government, not directly, but a talk of it.

Question. Do you remember who was agent in 1862 for the Delawares?

Answer. Yes; Fielding Johnson.

Question. Where were the headquarters of the agency then?

Answer. At my place.

Question. Didn't you assist Mr. Johnson in 1862 in getting up an Indian delegation at the request of the Government to search for lands?

Answer. Yes, I did; in 1862 and 1863—somewhere in there.

Question. And the Government submitted maps to you, did it not?

Answer. To him.

Question. One of the maps was of land in the Cherokee nation?

Answer. I find there were two delegations went to look; one went from Mr. Johnson, as agent, and one went under my direction. That is a little matter I found on the book. I looked over my old books, and that is correct.

Question. Where did the one go that went under Mr. Johnson's direction?

Answer. I don't know; I don't recollect. They went south and in various tribes, but nothing come of that, so I don't recollect.

Question. And where did the one go under your direction?

Answer. They went to the lands west of the Cherokee, and then I think there was a pointing out of land in the Creek nation; also what was called lost claims.

By Mr. HUTCHINGS:

Question. No man's land?

Answer. No man's land; that is simply from recollection, though.

85 Resumed by Mr. HARBY:

Question. When was the first time that you went to Washington with the Delaware delegation?

Answer. I think 1865.

Question. What did you go there for?

Answer. We went to deliberate about the removal of the Delawares.

Question. With whom did you deliberate in Washington?

Answer. Commissioner of Indian Affairs.

Question. Was there any delegation there from any other Indians at the same time that joined in the deliberation?

Answer. Not that time. There might have been, but we did not deliberate with any tribe; just the Commissioner of Indian Affairs.

Question. Do you know of any other delegation being there?

Answer. The Cherokees had a delegation also. They kept an attorney there, and there was most always some of the Cherokees there. I think there was then, but we didn't do business with them.

Question. Did you have anything to say to them?

Answer. Not that I had any cognizance of. The Indians might have talked together, but we didn't.

Question. When was the next time you went to Washington with the Delaware delegation?

Answer. I guess it was in the spring of 1866; that is my recollection; I think it was.

Question. At that time was there any other Indian delegation in Washington with whom you conferred?

Answer. You mean the Delawares?

Question. Yes.

Answer. Yes; the Cherokees were there.

Question. Can you mention any of the chiefs in that Cherokee delegation that was there in 1866 when you and the Delawares were there?

Answer. Yes.

Question. Please state whom you remember.

Answer. I remember William P. Ross was their attorney, their headman, and a man by the name of McDonald, and I think a man by the name of Bourrison. There were some others that were not of the delegation, but these I mention; McDonald and William P. Ross were of the delegation. Then there were other Cherokees there. William P. Ross was the whole thing, though, anyhow, but there was another man.

Question. Was Riley Keyes there?

Answer. I don't recollect that name.

Question. What position did Ross have in the delegation?

Answer. I understood him to be an attorney for the Cherokees.

Question. With regard to his prominence, what position did he have?

Answer. He was the principal figure. He was the chief in all business, and his word was taken and the others were quiet.

Question. Did the two delegations—the Delaware and Cherokee—have any conferences in Washington which you attended?

Answer. Always at the office of Commissioner of Indian Affairs. They had them there. The Cherokees and Delawares were present, but I was there.

Question. Were there any conferences which you did not attend?

86 Answer. I think not.

Question. What was the subject of these conferences?

Answer. It was an effort to select a piece of land on the part of the Delawares for them to remove to, and on the part of the Cherokees whether they should move into the Cherokee country.

Question. Did you have any conversation with William P. Ross as to the condition of the Cherokee treasury at that time?

Answer. I did not.

Question. Do you know anything about it?

Answer. I do not.

Question. Do you know what the Cherokee lands were worth at that time?

Answer. I do not, but I heard them spoken of as being very cheap, but that is all.

Question. Did you hear Chief Ross say anything about their value?

Answer. He was always very careful in his conversation.

Question. Where did these conferences take place?

Answer. In the office of the Commissioner of Indian Affairs.

Question. At Washington, D. C.?

Answer. At Washington, D. C.

Question. What propositions were made by the Cherokees?

Answer. Well, you know how it is with Indians. There was a great deal of waste paper and useless conversation, but as a result of the conversations the Cherokees made the proposition that the Delawares move on to their reservation and pay a head right which would give them a home, and this now was not definite to the Delawares. That did not amount to anything with them. Then they proposed to let them come in, and they should pay for what land they took—what land they wanted—and become citizens in that way; citizens of the Cherokee nation, I mean. That, again, to the Delawares was indefinite. They wanted to get lands, and those lands to be defined by metes and points that they should know when they were on their own land. They wanted to have it measured off to them. The Cherokees objected to that, and there was a great deal of conversation as to how they could satisfy the Delawares in becoming citizens and living on the Cherokee land. It was finally decided that they should pay out for the 160 acres of land to each

individual, and then pay a sum of money into the Cherokee treasury that would make the Delawares equal with the Cherokees in all their national funds, so that the Delawares would become Cherokees in a sense. They would be possessed of 160 acres of land; they would be possessed of an interest in the Cherokee funds and in all their possessions in the matter. They were to be Cherokees in every sense of the word, having all the privileges and rights that they had.

(Attorney for the defendant objects to so much of the foregoing answer as professes to testify with reference to the agreements made and entered into between the Delaware tribe and the Cherokee nation, April 11, 1867, because said agreement was reduced to writing and is complete and unambiguous and can not therefore be varied by parol testimony.)

Question. Did you have any conversation with Chief Ross, the Cherokee chief? What did he tell you the Cherokees would agree to?

(Objected to by attorney for defendant on the ground that it is hearsay and otherwise incompetent and irrelevant.)

87 Answer. He told me that the Cherokees objected to parting with any portion of their territory by selling it outright and having it divided off. They did not want to make a break in their possessions, but the Delawares, with the arrangement proposed, would be accommodated, he thought, to their satisfaction as well as if they did have it measured off for them, as it gave them all rights and privileges for the Cherokees, only they could not sell out. They could not part with it. It was an Indian contract, and the Cherokees could not sell unless the whole nation did so, but no part of it could be cut up in the sale and they did not want to let the Delawares in with the understanding that they could do that, but they would have their right, and when the Cherokees were disposed they would be dealt with as Cherokees. Their Delaware nationality was lost and merged in that of the Cherokee nation.

Question. What did he say as to the 160 acres for each man, woman, and child in the Delawares?

Answer. That conversation, now, was before the Commissioner, in conference, that they pay one dollar ($1) an acre and have assigned to each individual 160 acres, which would be $160 to every Delaware, based on the registry as to the number of Delawares; that is, the registry that was before the Commissioner of Indian Affairs.

Question. What was said as to the title the Delawares would have to this land, this 160 acres?

(Attorney for defendant objects to the foregoing question because the title is clearly defined in the agreement and can not be varied by parol testimony, and, further, because the question is one of law and not fact.)

Answer. Well, the title was to be contained in this agreement. If the Delawares accepted that each individual Delaware should be entitled to 160 acres of land, my understanding was that it defined

the matter clearly that they became Cherokees, and the treaty ratified was the obligation of the Cherokees to the Delawares. That agreement was ratified by Congress and then the Delawares were Cherokees. The document gave evidence of that act.

Question. Were they to have anything in addition to this 160 acres of land for each Delaware?

Answer. Why, the whole Cherokee possession of whatever kind; the Delaware, by this agreement, became an equal owner.

Question. This was in addition to his right to the 160 acres?

Answer. Why, yes; they put their money in there in addition to the land. They paid to compare with the Cherokee funds and possessions of whatever kind; that was the understanding.

Attorney for the defendant objects to all the answers of the foregoing question, and asks that it be withdrawn from consideration in this case, because it is an endeavor to put a construction on a written instrument of parol testimony, and by a witness who is not competent to speak as to such matter.)

Question. Now, I must ask you to again tell me how the title of the Delaware to this 160 acres was defined. I mean especially with regard to the inheritance in his children. Was there to be any such right?

(Attorney for defendant objects to this question because it is incompetent and irrelevant, and more particularly because the contract upon which this suit is based speaks for itself and can not be varied by parol testimony.)

88 Answer. That was distinctly talked about. One of the reasons why the Delawares wished their land defined, that there was to be no questions of this kind arise. They wanted to be possessed of a home for themselves and their children, and they did not want to have it end with their lives, but it was to be a continued possession of the Delawares and their children.

Question. You refer now to the 160 acres?

Answer. I do.

Question. Did Chief Ross say anything to you on this point as to what the Cherokees would be willing to do?

Answer. As an individual outside of the commission?

Question. Yes.

Answer. I don't recollect that he did. We talked in general a great deal, but I don't recollect.

Question. What did he say at any time?

Answer. His conversation was as I have stated, that the Cherokees objected to defining and splitting up their territory. He said, "You Delawares can go down there and live with us and have everything we have and it is yours forever, and you would not have any more if you had the land marked off." This is their idea, and they would not do that. They would not do it anyhow, but they let them in on these plans.

(Attorney for defendant objects to the foregoing answer as being incompetent and irrelevant, because all the conversation and oral agreements with reference to the contract were merged into the land agreement of April 11, 1867, upon which this suit is based.)

Question. Did they let them in on the understanding that the children were to inherit the father's right to the 160 acres?

Answer. Yes.

(Same objection as heretofore.)

Question. Did they let them in on the understanding also that in return for all these payments they would have in addition to the 160 acres their right, both communal and otherwise, that the Cherokees themselves had in the Cherokee nation?

Answer. That was the understanding.

Question. That was what the Cherokees finally submitted as their proposition?

Answer. Yes.

Question. These propositions and these final propositions were submitted in the way of conference with the Commissioner of Indian Affairs?

Answer. Yes.

Question. You were present?

Answer. I was present.

Question. This final proposition was made to the Delawares in 1866, at which time they went home, didn't they?

Answer. Yes; they went home.

Question. And you went with them?

Answer. Yes.

Question. While the Delawares were in Kansas they had for the purpose of their tribal government chiefs and counselors. Is that right?

Answer. Yes; that is right.

Question. How did the chiefs and counselors disseminate news amongst the Delaware nation throughout the nation?

89 Answer. Now, that depends upon what the subject was for distribu[illegible].

Question. Ma[illegible]s of importance?

Answer. If it was matters that were connected with the United States Government, it had a course; it had a way.

Question. What was that way?

Answer. Public business—that was with the Government. An agent was instructed and he, through the interpreter, notified the chiefs and counselors of the business that was to be considered.

Question. When there was a matter which was to be conveyed to the Delaware people themselves, how did the chiefs and counselors convey that matter?

Answer. They either directed the Government interpreter to go and notify or they sent their counselors around; their headmen and counselors to notify the people.

Question. There was a constant visitation going on between the chiefs and counselors and the people, was there not?

Answer. Yes; they were familiar with them.

Question. Was the fact of this agreement, or rather this offer for an agreement which you have related, was it made by the Cherokees in Washington to the Delawares in Washington and conveyed to the people?

Answer. Every man understood it.

Question. How was it conveyed?

Answer. I, as agent, notified all that I came in contact with and took pains to have it done. I sent the interpreter, who was the Government interpreter, sent him to the chiefs with a notice that there was business from Washington Government to be transacted and for them to meet for that purpose on a given day, appointing the time. This announcement was made to the chiefs and counselors in particular, and they to the whole people.

Question. Did you explain to the individuals what this offer for an agreement was, and what it would be as you have stated in this deposition?

Answer. I did.

Question. Was it not a habit of the Delaware people to talk amongst themselves concerning matters which came up that would affect the whole tribe?

Answer. Yes.

Question. They were particularly given to dwelling on these things amongst themselves?

Answer. Yes.

Question. Each man wanted his say?

Answer. Yes.

Question. Did the Delaware chiefs who were in Washington with you tell the people what this offer for an agreement was; what it amounted to?

Answer. Yes.

Question. And did they tell it, giving it the consideration and effect as you have set forth in your deposition?

(Attorney for defendant objects to the foregoing question on the ground that it is incompetent, irrelevant, and immaterial.)

Answer. That is my understanding.

Question. Are any of these chiefs or counselors who took part in that agreement now living?

90 Answer. I think they are all dead.

Question. When these chiefs and counselors spoke to the people with regard to this agreement, did they say to them what you have told me to-day was the terms of the agreement in Washington?

(Attorney for defendant objects to this question upon the ground that the declarations of either party to the contract or their agents are incompetent to vary or construe that contract after it is made.)

Answer. They told them and I told them.

Question. Now you made a list of all the Delawares who would agree to go to the Indian Territory?

Answer. Yes.

Question. That list was inscribed in a book and you sent a copy of that to Washington to the Department of Indian Affairs?

Answer. Yes.

Question. These Delawares who went to the Cherokee territory were entitled to certain tracts of land in Kansas, were they not, before they went?

Answer. Yes; they owned their homes.

Question. Each one had how many acres?

Answer. Well, that was indefinite, but 80 acres to an individual had been set off to them.

Question. And they were paid for each 80-acre tract by the Government of the United States?

Answer. Yes.

Question. How much was each one to receive?

Answer. Two hundred dollars.

Question. This money was sent to you at various times to be disbursed to the Delawares?

Answer. Yes.

Question. Will you state the manner of payment made by you?

Answer. Of this money?

Question. Yes.

Answer. I paid it to individuals by name as it appeared on the roll.

Question. Did you pay any in Kansas?

Answer. Yes.

Question. Did you pay any in the Indian Territory?

Answer. I did.

Question. Did you take any receipts for your payment?

Answer. I did; I took a receipt for all, every one.

Question. Did you let the Delawares know that you were going to disburse this money to them?

Answer. Why, yes; just as I notified about any other business. They were notified and understood it, and came together for that purpose.

Question. These receipts that you got, what did you do with them?

Answer. They were sent to Washington.

Question. In what department?

Answer. Commissioner of Indian Affairs.

Question. With the exception of the dead and missing Delawares, these receipts represent all the Delawares that located in the Indian Territory?

Answer. No; it did not. For this reason, they were not there, all of them. They belonged and had communal rights, but they were not all present.

91 Question. Did not all the Delawares that agreed to go to the Indian Territory go there with the exception of those that died or disappeared?

Answer. Yes; that is so.

Question. And you paid those that went there the money that was coming to them?

Answer. Yes.

Question. And these receipts you filed in Washington?

Answer. Yes.

Question. So that those receipts which are not on file are not there because you can not find or could not find the Indians to receive the money?

Answer. That is it.

Question. And you found all the Delawares that succeeded in getting to the Indian Territory?

Answer. Yes.

Question. To the children you paid the money by giving it to their natural guardians?

Answer. Yes.

Question. And took receipts?

Answer. Yes.

Question. You lived with the Delaware Indians almost all your life, haven't you, or the greater portion of it?

Answer. All but about twenty-one years.

Question. You are well known to all of them and they all know you well?

Answer. All that were living when I went down there; there were some born since.

Question. I forgot to ask you, Mr. Pratt, if you were not a minister?

Answer. Yes.

Question. How long have you been a minister?

Answer. Since 1842.

Question. Did you ever meet a Delaware Indian who had not received his money that was coming to him from you?

Answer. No, sir.

Question. This agreement which was pressed in 1866 was supposed to have been put into writing and signed in 1867. Is that right?

Answer. Yes.

Question. Who prepared that agreement when it was put into writing?

Answer. Well, it was prepared in the office of the Commissioner of Indian Affairs.

Question. You did not know any Delaware or Cherokee Indian that had sufficient literary or legal ability to prepare an agreement of that kind, did you?

Answer. I think William P. Ross.

Question. He did not prepare it, did he?

Answer. No, sir.

Cross-examination by Mr. HUTCHINGS:

Question. Do you know whether or not the agreement frequently referred to in your testimony was read over to the two delegations representing the Delaware and Cherokee tribes of Indians?

Answer. It was read over repeatedly; read over and corrected and altered and read over again several times, and each party put in his suggestions, until they finally harmonized.

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Question. Then, as I understand, the agreement, as finally signed, expressed the wishes of both sides, and both sides were fully satisfied with all it contained?

Answer. No; the Delawares were not satisfied, but they signed because it was the best they could do. They wanted to own the land outright.

Question. They did not contend at any time afterwards that the agreement did not fully express what they intended it to express, did they?

Answer. No, sir; I did not hear anything of that kind.

Question. How many of the Delawares who could speak English signed the agreement?

Answer. (Refers to treaty.) John C. Conner, John Sarcoxie, Charles Journeycake. They all spoke English so that they could hold a conversation, but Charles Journeycake and Isaac Journeycake was Government interpreter, and John Connors was the interpreter for the United States Army and Mexico and all through. He spoke English. He was interpreter for the United States Army.

Question. Do you know why the Delawares wanted to leave Kansas and give up lands which they held in severalty?

Answer. They did not particularly want to go—really did not want to go; but the wiser part of the nation thought it best to go and get beyond the reach of towns and where the young men and women could get whisky and hurt themselves. They wanted to get beyond that, and a good many of them said they did not want to live with white folks; they were Indians, but the best part of the nation thought they ought to go away from so much opportunity to be drunk; and there was this about it too: A wild country suited the wild ones for hunting, and they would rather be there, and they consented to go for that reason, as there was plenty of game and fish there then.

Question. Is it not true that the real Indian thought then and thinks now that no greater evil can befall his tribe than to have them forced to take their lands in severalty, with a title that they can alienate?

(That is objected to for the reason that it is requesting the witness to give his opinion of the personal preference of the Indians, and for the additional reason that it is immaterial and irrelevant.)

Answer. The native Indian—that is correct; the untrained Indian, I mean.

Question. Did not the Delawares first contract with the Government to be settled there in the Choctaw and Chickasaw or Creek countries, so anxious were they to again assume relations with people who still held their lands under the ancient customs and usages of the Indian?

(That is objected to because it assumes a state of facts which has not been proven to exist and bases the question on those facts, and for the additional reason that it is immaterial and irrelevant, and also because it asks for the witness to make a conclusion from unrelated evidence, not to give a relation of facts.)

Answer. The Delawares visited not only tracts of land that were pointed out to them, but they made a general journey looking at the country. They looked at the pieces you referred to, but the idea of division was not in their minds. They were seeking
93 a country that suited them, and took this Cherokee offer as being land that suited them better than the other.

Question. Have you any idea how much land the Cherokees had *per capita?*

Answer. I don't know anything about it. I did at the tine know about their homestead; but then they had some property in North Carolina and some in other States, but the definite amount I do not know. I think they had some in Georgia, where they came from. Some Cherokees reside still in North Carolina. I know about that, because, in talking this matter up, the Delawares knew of the property they had in different places around, and were going to be in possession of and owner of it if the treaty was ratified.

Question. What did the Delawares pay the Cherokees for any land in excess of 160 acres apiece?

Answer. I don't know. I don't know the number they really paid for, because I have not been there since. I don't live there now.

Question. The agreement was that they pay the Cherokees for 160 acres of land for each man, woman and child?

Answer. Yes, as I said. I have given that testimony already. They should pay into the Cherokee treasury an amount of money to make them equal with the Cherokees in all their possessions, money, and property.

Question. Don't you know, Mr. Pratt, that the money they were to pay into the treasury was simply for the purpose of making them equal in the national fund of the Cherokee nation, and that the agreement expressed it in this way: "And the said Delawares further agree that there shall be paid from their funds now or hereafter to come into possession of the United States a sum of money which shall sustain the same proportion to the existing Cherokee national fund that the number of Delawares, registered as above mentioned and removed to the Indian Territory, sustains to the whole number of Cherokees residing in the Cherokee nation," and as to that part, don't you further know that it stated that when they so paid that amount into the treasury that they should become members of the Cherokee nation, with the same rights and immunities and the same

participation, and no other, in the national funds as native Cherokees?

(That is objected to because it is confusing, and because there is more than one question in the interrogatory submitted to the witness, and because he can not be called upon to analyze the meaning of the interrogatory and answer accordingly.)

Answer. My understanding was as I have expressed it in the testimony I gave and the way it was so understood by the Indians at the time.

Question. If a merchant had $5,000 in cash in his business and $5,000 in goods and you made a bargain with him to pay into the business as much as he had in it, do you think you would have completed that bargain by simply putting $5,000 in cash—in other words, if you simply put in the $5,000, would you not be getting one-half interest in the goods for nothing?

(That is objected to for the reason that it is a question not bearing upon any issues in the action of this casue, is not proper cross-examination in any evidence that has been given in the case, and for the additional reason that the witness's theoretical line of contract in the proposed business transaction is immaterial.)

94 Answer. I must be very thick-headed, because I can not see the point. If a merchant has a stock of goods valued at a certain amount, and then he has a cash deposit in addition, I become a partner with him by paying as much in comparison with his stock and his money. I have a full interest.

Question. Yes; but you ought to put as much money and as much stock, too.

(Objections renewed.)

Answer. Yes.

Question. Well, then, if the Delawares only paid into the treasury as much cash *per capita* as the Cherokees already had in the treasury *per capita* and only paid them per 160 acres of land *per capita*, when the Cherokees had upward of 1,000 acres *per capita*, the Cherokees then got no consideration from giving to the Delawares the excess *per capita* lands over 160 acres, did they?

(Attorney for defendants [plaintiffs?] objects to above question, because it is argumentative; because it is based upon facts which appear to stand alone, but which have not been proven to exist, except in connection with other facts, namely, that it has been proven that consideration for the contract was the money paid into the Cherokees' treasury and also the excessive price paid for the 160 acres of land, much more than the Cherokees were offering it at the time to the other people.)

Answer. I understand that the Delawares did pay besides the $160, or for 160 acres of land—they did pay into the Cherokee treasury for the estimated value of all their possessions.

Question. Oh, no.

Answer. And the cash on hand. That is the way they understood it.

Redirect examination by Mr. HARBY:

Question. In the second answer to the second question on cross-examination, when you said that they consented because it was the best they could do and that they wanted to own the land outright, you have not forgotten that you said that they were to own the land so that their children were to own it after them, have you?

Answer. No, sir.

Question. When you say they wanted to own the land outright, do I understand you to mean that they wanted the land divided?

Answer. Sectioned off; yes.

Question. Segregated?

Answer. Yes.

Question. And that is what you mean when you say they wanted to own the land outright and that would give them the privilege of disposing of it any time they wanted, and as it is they are subject to the will of the Cherokees and they are to submit to them?

Answer. Yes.

Question. They can not dispose of this land until it is segregated?

Answer. No; until it is the will of the Cherokees.

Question. But they have obtained from the Cherokees such a title that when it is segregated they can dispose of it?

Answer. I understand this ratified treaty conveys that to them.

JOHN G. PRATT.

Sworn to before me this 8th day of December, 1898.

HARRIET A. ANDREWS,
Notary Public, Jackson County, Mo.

95 STATE OF MISSOURI, }
County of Jackson, City of Kansas. }

I, H. A. Andrews, notary public in and for the county of Jackson, in the State of Missouri, hereby certify that the witness, John C. Pratt, was duly and properly sworn by me prior to giving his testimony, and that the answers to the foregoing questions were duly put to him and were taken down in his presence, and that the taking of said deposition was attended by Marx E. Harby, counsel for plaintiffs, and William T. Hutchings, counsel for defendants, and that said deposition was read over by him.

Given under my hand and seal at Kansas City, State of Missouri, on the 8th day of December, 1898.

[SEAL.] HARRIET A. ANDREWS,
Notary Public, Jackson County, Mo.

Deposition of Sally O. Smith for Claimants, Taken at Wagoner, Ind. T., on the 13th Day of December, A. D. 1898.

Claimants' counsel, Marx E. Harby; defendants' counsel, William T. Hutchings.

The witness having been duly sworn to tell the truth, the whole truth, and nothing but the truth relative to this case in which she is to testify, testifies as follows:

Direct examination by Mr. HARBY:

Question. Please give your name, age, residence, and occupation.

Answer. My name is Sally O. Smith; I am 58 years of age; I live at Nowata, Ind. T., and I run a farm.

Question. Tell whether you have any interest or connection in this case, direct or indirect.

Answer. I am one of the plaintiffs in this case.

Question. Are you one of the registered Delawares that lived in Kansas?

Answer. Yes, sir.

Question. When was it that you first heard of the agreement that the Cherokees offered to make in Washington for the Delawares to come down to the Indian Territory?

Answer. It was about 1866.

Question. State all the circumstances of that that you remember.

Answer. It don't seem like I remember much of anything only that my people came down here to look after a location.

Question. What was your father's name?

Answer. Isaac Journeycake. My husband's name was John T. Smith. I was married in 1859, in Kansas.

Question. When was it that you first heard of the agreement that the Cherokees wanted to make with the Delawares, after the delegation had returned from Washington in 1866?

Answer. It was in 1866. I heard my father and husband talking over this, asking us married ones what we thought about it. I don't remember the time of the year.

Question. Tell us what your father told you the agreement was.

96 Answer. He said they had come to the conclusion that they would purchase land down here and wanted us to tell what we thought about it, and I, for one, asked them in what way it was we would go there and make it our home, and he said why we would go and buy us homes, of course. On that I told him I would leave it entirely with him, because I knew he would try and work for the advantage of his children, and we would be willing to do just exactly as he thought best. He said we would have equal rights here and buy so much land to each head and have our rights established here in addition to our owning the land.

Question. Did your father say this was a proposition coming from

the Delawares to the Cherokees, or was it coming from the Cherokees to the Delawares?

Answer. From the Cherokees to the Delawares. He said that the Cherokees wanted to sell this land at $1 an acre; that's what he said. He said also that the Cherokees wanted the Delawares to pay a certain amount into the treasury, because when they were talking about that I said to my husband, why would we have to take our funds and pay into their treasury, and he said because the Cherokees were bankrupt; that they were out of funds.

Question. Did your father tell you what rights the Delawares would receive in exchange for paying down an amount equal to the $1 an acre, and also paying their proportionate amount into the Cherokee treasury?

Answer. He said we would have equal rights in every respect that the Cherokees had. He said that we would get each 160 acres, and that we would have in addition to that as much right in the funds and lands of the Indian Territory as a Cherokee had. My father told me that this was the offer made to the Delawares by the Cherokees at Washington.

(Counsel for defendants objects to this question and all of the above questions, and asks that the answers and questions be withdrawn from the record and the attention of the court, because there is no mention of such a thing in the agreement and consequently there can be no call to construe it to include that which is not in any way set forth, and because the agreement is in writing and not ambiguous and this testimony is not competent to vary a written agreement, and also because the questions and answers are incompetent, irrelevant, and immaterial in this that most of them are hearsay, and all of them tend to vary a written contract.)

Question. Did your father explain to you what kind of title or ownership you Delawares would have in those plats of 160 acres?

Answer. My father said that we were to buy the land outright. That if we accepted those offers made by the Cherokees we would own the land, so that when we died our children or their heirs would get it.

Question. Were you acquainted with the Delawares that lived in Kansas?

Answer. Yes; I was pretty well acquainted amongst them. I knew most all of them pretty well. Most of the leading men were connections of my family. I talked with them and associated with them.

Question. Did you hear this Delaware-Cherokee agreement talked about by them and between them and the members of the council in the Delaware nation?

Answer. Yes, sir; it was quite an excitement amongst both men and women.

97 Question. And who explained to them the meaning and extent of the offers made by the Cherokees?

Answer. Mr. Journeycake, for one, and John Connor, Jin Connor, and all of their headmen.

Question. What did they say to them?

Answer. They said just what was told to me by my father; that the Cherokees wanted to sell to the Delawares 160 acres of land for each man, woman, and child in the Delaware nation, and also in addition to that all the rights which a Cherokee citizen had or would have in the funds, lands, and all property of the Cherokee nation.

(Counsel for defendants renews objection.)

Question. Your father was a brother of Mr. Charles Journeycake?

Answer. Yes, sir.

Question. Both signed the agreement?

Answer. Yes, sir; because my father was United States interpreter and he had to sign the papers.

Question. Those things that you have told were stated to the Delawares by the chiefs and council?

Answer. Yes, sir; I was present once during council. I don't suppose the whole tribe heard it, but a great many of them did, and it went from one family to the other and was explained to them.

Question. And you heard the people talking of it and repeating those things?

Answer. Yes, sir; they talked over those things amongst themselves. They were talked over in council. One repeated it to another. Everybody seemed to think they would hold the land so that when they died their heirs would get it, and in addition to that they would get as much land and as much money out of the Cherokee lands and funds as a Cherokee citizen would get, and that was the reason they agreed to come down here.

(Counsel for defendants renews his former objection.)

Question. Do you remember that a roll of the Delawares or a list of the Delawares who were coming down here was made by Mr. Pratt, the Indian agent?

Answer. Yes, sir.

Question. Don't you remember whether any of those that were on the roll died before the Delawares got down to the Indian Territory?

Answer. I don't remember that.

Question. You remember after they got here and before May, 1869, a good many died.

Answer. Yes, sir.

Question. They had fever, had they not?

Answer. They had typhoid, malaria, and chills.

Question. About how many of them died, would you say?

Answer. I don't know, I am sure. They died like sheep. I myself lost one sister. She had a congestive chill.

Question. Why did not the Delawares, when so many of them died before this payment was made, object to paying $160 for every enrolled Delaware?

Answer. Well, they thought when they bought the land and paid for it, that the heirs would get it after them; that when we paid for the land we thought it was ours.

(Counsel for defendants objects to this question and all of the above questions and asks that the answers and questions be withdrawn from the record and the attention of the court, because
98 there is no mention of such a thing in the agreement, and consequently there can be no call to construe it to include that which is not in any way set forth, and because the agreement is in writing and not ambiguous, and this testimony is not competent to vary a written agreement; and also because the questions and answers are incompetent, irrelevant, and immaterial in this, that most of them are hearsay and all of them tend to vary a written contract.)

Question. Do you know of any Delaware Indian living who was a chief of the nation or council in Kansas, or are they all dead?

Answer. I believe they are all, every one of them. The last chief was Mr. Journeycake. He died in the Indian Territory.

Question. When the Delawares came here from Kansas, they selected their land, did they not?

Answer. Yes; each one selected his 160 acres, and those that had wives and children selected 160 acres for each child and also for his wife. They tried to get places where they could take them all together, and when they could not do that, they tried to get places elsewhere.

Question. Did they improve their places?

Answer. Yes, sir; they made farms, built houses and fences, and so on.

Question. Can you tell me about how the value of their improvements run?

Answer. Well, from a few hundred dollars up to several thousand dollars. Mine is worth $1,500.

Question. How many were in your father's family when you came to the Indian Territory?

Answer. There were seven—himself, wife, and five children. He had four married children in addition to that.

Question. The Delawares built schools and churches, did they not?

Answer. Yes, sir.

Question. You have seen them?

Answer. Yes, sir.

Question. Did the Cherokees help build any of those churches and schools?

Answer. No, sir.

(Counsel for defendants objects to this question and all of the above questions, and asks that the answers and questions be withdrawn from the record and the attention of the court, because there is no mention of such a thing in the agreement, and consequently there can be no call to construe it to include that which is not in any way set forth, and because the agreement is in writing and not ambiguous, and this testimony is not competent to vary a written agreement; and also because the questions and answers are incompetent, irrelevant, and immaterial in this, that most of them are hearsay and all of them tend to vary a written contract.)

Question. Mrs. Smith, please state whether you know of any other matter relative to this case.

Answer. I have stated about all I know.

SALLIE O. SMITH.

Sworn to before me the 13th day of December, 1898.

[SEAL.] P. H. WILKERSON,
Notary Public for the Northern Judicial District of the Indian Territory.

99 NORTHERN JUDICIAL DISTRICT OF THE INDIAN TERRITORY, *Town of Wagoner.*

I, P. H. Wilkerson, a notary public in and for the northern judicial district of the Indian Territory, hereby certify that the witness, Sallie O. Smith, was duly and properly sworn; that the answers to the questions put to her were taken down in her presence and in my presence, and that they were read over to her and signed by her; that at the taking of said testimony I was attended by Marx E. Harby, of counsel for plaintiffs, and William T. Hutchings, attorney for defendants.

Dated at Wagoner, Ind. T., December 13, 1898.

[SEAL.] P. H. WILKERSON,
Notary Public for the Northern Judicial District of the Indian Territory.

Deposition of John R. McIntosh, for Claimants, Taken at Washington, D. C., on the 29th Day of March, A. D. 1899.

Claimants' counsel, Marx E. Harby; defendants' counsel, John J. Hemphill.

JOHN R. MCINTOSH, having been produced as the witness on behalf of the plaintiffs, was by me sworn before any question was put to him to tell the truth, the whole truth, and nothing but the truth relative to the said cause, and thereupon deposed and said that his name is John R. McIntosh; that his occupation is that of a merchant at Chelsea, Ind. T.; that he is 33 years of age, and that his place of residence is Chelsea, Ind. T.; and that he is not interested, directly or indirectly, in the claim which is the subject of inquiry in said cause, and that he is not related to the plaintiffs.

Thereupon the said John R. McIntosh was examined by counsel for the plaintiffs, and in answer to interrogatories testified as follows:

1 question. Mr. McIntosh, whereabout were you born?

Answer. In the Cherokee nation.

2 question. Are you a Delaware or a Cherokee?

Answer. A Cherokee.

3 question. Your father is a Cherokee?

Answer. Yes, sir.

4 question. Have you resided in the Cherokee nation all your life?

Answer. Yes, sir.

5 question. Have you held any public office there?

Answer. Yes, sir.

6 question. What was the first office you held there?

Answer. Clerk of the senate—engrossing clerk.

7 question. When was that?

Answer. In 1893 and 1894.

8 question. What was the next office you held after that?

Answer. Census enumerator for the northern half of Cooweescoowee district.

9 question. Did you hold any other office besides that?

Answer. Yes, sir. In 1897 I was elected to the lower branch of the national council.

10 question. Any other office besides those?

Answer. No, sir.

100 11 question. Do you hold any office there now?

Answer. My term is not expired yet as a member of the council.

12 question. When was the last census taken in the Cherokee nation that was authenticated?

Answer. In 1880. That is the only authenticated census we had.

13 question. Have you a copy of that census here?

Answer. Yes, sir.

14 question. I hand you a printed book entitled "Authenticated Rolls of 1880, Cherokee Nation, Illinois District." Will you please look at it and see if that is part of the authenticated census of 1880 of the Cherokee nation?

Answer. That's one district.

COUNSEL FOR PLAINTIFFS: I offer that in evidence. The same is marked "Exhibit A" for identification.

(Counsel for defendants reserves his objections.)

15 question. I show you a book entitled "Authenticated Rolls of 1880, Cherokee Nation, Tahlequah District," and ask you if that is the census for Tahlequah district for 1880?

Answer. Yes, sir.

COUNSEL FOR PLAINTIFFS: I offer that in evidence. The same is marked "Exhibit B" for identification.

16 question. I show you a book titled "Authenticated Rolls of 1880, Cherokee Nation, Saline District." Is this a census for that district for that year?

Answer. Yes, sir.

COUNSEL FOR PLAINTIFFS: I offer this in evidence. The same is marked "Exhibit C" for identification.

17 question. I show you a book titled "Authenticated Rolls of 1880, Cherokee Nation, Canadian District," and ask you if that is the census of 1880 for that district?

Answer. Yes, sir.

COUNSEL FOR PLAINTIFFS: I offer that in evidence, and the same is marked "Exhibit D" for identification.

18 question. I show you a book titled "The Authenticated Rolls of 1880, Cherokee Nation, Cooweescoowee District." Is that the census of that district for 1880?

Answer. Yes, sir.

COUNSEL FOR PLAINTIFFS: I offer that in evidence, and the same is marked "Exhibit E" for identification.

19 question. I show you a book titled "Authenticated Rolls of 1880, Cherokee Nation, Sequoyah District." I ask you if that is the census for Sequoyah district for 1880?

Answer. Yes, sir.

COUNSEL FOR PLAINTIFFS: I offer that in evidence, and the same is marked "Exhibit F" for identification.

20 question. I show you a book titled "Authenticated Rolls of 1880, Cherokee Nation, Delaware District." Is that the census for Delaware district for 1880?

Answer. Yes, sir. The names of the first 138 citizens, however, are missing, but the total at the end of the book is correct.

COUNSEL FOR PLAINTIFFS: I offer this in evidence, and the same is marked "Exhibit G" for identification.

21 question. I show you a book titled "Roll of Orphans, Cherokee Nation, 1880." Is that a list of the orphans in the Cherokee nation in that year?

101 Answer. That is a list of the orphans from the districts of Saline, Delaware, Cooweescoowee, Canadian, Sequoyah, Going Snake, and Flint, as appears upon the cover of the book. These were all the orphans attending school, and those not attending school were at home with their guardians.

COUNSEL FOR PLAINTIFFS: I offer that in evidence, and the same is marked "Exhibit H" for identification.

22 question. I show you a book titled "Authenticated Rolls of 1880, Cherokee Nation, Flint District." Is that a list of the Cherokees for that district for that year?

Answer. Yes, sir.

COUNSEL FOR PLAINTIFFS: I offer that in evidence, and the same is marked "Exhibit I" for identification.

23 question. I show you a book titled "Authenticated Rolls of 1880, Cherokee Nation, Going Snake District." Is that the census for that district for that year?

Answer. Yes, sir.

COUNSEL FOR PLAINTIFFS: I offer that in evidence, and the same is marked "Exhibit J" for identification.

24 question. There were a number of people that were admitted and readmitted to Cherokee citizenship by the national council and commissions in the year 1880 and since, were there not?

Answer. Yes, sir.

25 question. Have you a list of those people?

Answer. I have a book.

26 question. This book which I show you, indorsed, admitted and readmitted, is that the book you refer to?

Answer. Yes, sir.

27 question. This book is a list of persons admitted and readmitted from the year 1880 up to the latest date that appears in the book, is it not?

Answer. Yes, sir.

COUNSEL FOR PLAINTIFFS: I offer that in evidence, and the same is marked "K" for identification.

28 question. There were a number of people from North Carolina who removed to the Cherokee nation under an act of the national council which was approved December 30, 1880, were there not?

Answer. Yes, sir.

29 question. I show you a book titled "North Carolina Cherokees." Is that the book?

Answer. Yes, sir.

COUNSEL FOR PLAINTIFFS: I offer that in evidence, and the same is marked "Exhibit L" for identification.

30 question. I show you a book titled "Delawares," and ask you what it is and where you got it?

Answer. This book was furnished to me by an act of the national council of the Cherokee nation.

31 question. What did they furnish it to you for?

Answer. I was appointed census enumerator, and it was to assist me in taking the census. It was supposed to be a copy of the Delawares who originally moved into the Cherokee nation.

COUNSEL FOR PLAINTIFFS: I offer it in evidence, and it is marked "Exhibit M" for identification.

32 question. I show you a book titled "Shawnees," and
102 ask you if that is a register of the members of the Shawnee tribe of Indians who located in the Cherokee nation prior to the 10th of June, 1871, within two years from the 9th day of June, 1869, in accordance with a certain agreement which is set out in the book?

Answer. Yes, sir.

COUNSEL FOR PLAINTIFFS: I offer that in evidence, and it is marked "Exhibit N" for identification.

33 question. All these books marked exhibits, for distinction, A, B, C, D, E, F, G, H, I, J, K, L, M, and N, were furnished to you by an act of the national council to assist you in preparing the census of the Cherokees, is that so?

Answer. Yes, sir.

34 question. In what year was that?

Answer. In 1896.

35 question. And they were given to you by the national council as being a true list of the Cherokee citizens?

Answer. Yes, sir.

36 question. And they instructed you to use those books in making your census, and not to inscribe anyone whose names were not on the list in those books or who was not a de-cendant of some one who was on those books, is that so?

Answer. Yes, sir.

37 question. Were these instructions in writing?

Answer. The act is the instructions, and the chief also gave instructions how to enroll. A separate book was made for Cherokees by blood, and a separate one for Shawnees, and so on.

38 question. Did you proceed to take the census?

Answer. Yes, sir.

39 question. What happened to it after you took it?

Answer. When we got through with our work we delivered it to the principal chief, as authorized to.

40 question. Has that census that you took ever been approved?

Answer. The work of the committee has been adopted, but the rolls have never been authenticated.

41 question. When you say the rolls have never been authenticated, explain just what you mean.

Answer. Well, it means authenticated—just simply the passing of an act authenticating the rolls.

42 question. You mean, then, that before a census is adopted as a true census it is necessary for the national council to pass on it adopting it?

Answer. Yes, sir.

43 question. And this has not been done with the census you took?

Answer. No, sir.

The said witness was then cross-examined by the counsel for defendants, and in answer to interrogatories testified as follows:

1 cross-question. When were these books given to you that you heve offered as exhibits?

Answer. In September, 1896.

2 cross-question. Where have they been since that time?

Answer. I have had them at home.

3 cross-question. Is that all that were given to you?

Answer. Yes, sir.

4 cross-question. I see some corrections there in red ink. Who made these corrections?

103 Answer. The department.

5 cross-question. Which department?

Answer. The Cherokee nation.

6 cross-question. Was that done when you received them?

Answer. Yes, sir.

7 cross-question. How were those authenticated?

Answer. They passed an act showing that these rolls should be the official rolls of the Cherokee nation for that year.

8 cross-question. Has there been any authenticated since that time?

Answer. No, sir.

9 cross-question. Were these corrections made after the authentication or prior thereto?

Answer. Those in red ink were made by the executive department of the Cherokee nation after the authentiction. They are simply copies. Some of the corrections are errors in printing and some few names left out, and some are errors in comparing with the regular rolls. That's the way these red ink places appear.

COUNSEL FOR PLAINTIFFS: I now offer in evidence all of plaintiffs' exhibits that were marked for identification.

No objection being made, they are received in evidence and marked accordingly, as follows: Exhibit A, March 29, 1899; Exhibit B, March 29, 1899; Exhibit C, March 29, 1899; Exhibit D, March 29, 1899; Exhibit E, March 29, 1899; Exhibit F, March 29, 1899; Exhibit G, March 29, 1899; Exhibit H, March 29, 1899; Exhibit I, March 29, 1899; Exhibit J, March 29, 1899; Exhibit K, March 29, 1899; Exhibit L, March 29, 1899; Exhibit M, March 29, 1899; Exhibit N, March 29, 1899.

COUNSEL FOR PLAINTIFFS: I offer in evidence the constitution and laws of the Cherokee nation, published by authority of the national council revised, amended, codified, and prepared by an act of the national council on the 19th November, 1874.

No objection being made the same is received in evidence and marked "Plaintiffs' Exhibit O."

COUNSEL FOR PLAINTIFFS: I offer in evidence acts and resolutions passed and enacted at the regular term of the national council, 1877, and the extra session of 1878.

No objection being made the same is received in evidence and marked "Plaintiffs' Exhibit P."

COUNSEL FOR PLAINTIFFS: I offer in evidence the compiled laws of the Cherokee nation, published by authority of the national council, printed at Tahlequah, Ind. T., by the National Advocate Print, in 1881.

No objection being raised the same was received in evidence and marked "Plaintiffs' Exhibit Q."

COUNSEL FOR PLAINTIFFS: I offer in evidence the laws and joint resolutions of the Cherokee nation, enacted during the regular and special sessions of the years 1881, 1882, and 1883, published by authority of an act of the national council, by E. C. Boudinot, Jr., printer at Tahlequah, Cherokee nation, in the year 1884.

No objection being raised the same is received in evidence and marked "Plaintiffs' Exhibit R."

COUNSEL FOR PLAINTIFFS: I offer in evidence the constitution and laws of the Cherokee nation, published by an act of the national council, published by the Folly R'y Printing Co., Parsons, Kans., 1893.

No objection being raised the same is received in evidence and marked "Plaintiffs' Exhibit S."

104 It is stipulated and agreed between counsel for plaintiffs and counsel for defendants that Plaintiffs' Exhibits O, P, Q, R, and S be not filed until the close of the plaintiffs' case, and the plaintiff stipulates to select and identify the parts and sections of Exhibits O, P, Q, R, and S which he desires to have printed with the remainder of this case.

It is further stipulated that the said Exhibits O, P, Q, R, and S may be inspected on demand by the counsel for defendants, and such extracts or selections shall also be received in evidence and printed in the case if necessary.

By the COMMISSIONER:

Question. Do you know of any other matter relative to the claim in question? If so, state it.

Answer. I know of nothing more.

JNO. R. McINTOSH.

DISTRICT OF COLUMBIA, *City of Washington,* } ss:

I, Erastus S. Rockwell, a commissioner of the Court of Claims, of Washington, D. C., certify that at the time and place aforesaid John R. McIntosh, witness on behalf of the plaintiffs in the above-entitled cause, was by me sworn, before any question was put to him, to tell the truth, the whole truth, and nothing but the truth relative to the said cause, and that his answers were taken down in my presence, and his deposition as above set forth was read over to and signed by him before me at the time and place aforesaid.

In witness whereof I have hereunto set my hand and official seal this the 29th day of March, 1899.

[SEAL.] ERASTUS S. ROCKWELL,
Commissioner, Court of Claims.

104½–236 PLAINTIFFS' EXHIBITS A TO J, INCLUSIVE.

These exhibits are the authorized rolls of 1880 of the Cherokee nation for various districts and show the names, nativity, age and sex of the Indians upon said rolls, being in all 20,283 Indians described therein, including 338 orphans shown in Exhibit H. Said exhibits in full are on file in the Court of Claims, but, by consent, are not printed here in full.

236½–266 PLAINTIFFS' EXHIBIT K.

This exhibit is a list of persons admitted or re-admitted to Cherokee citizenship by the national council and commissions on citizenship in the year 1880 and since that year.

This list shows the name of each person therein, the sex, date of admission, whether by council or commission, whether admitted or readmitted, and whether such admission or re-admission was conditional or unconditional, and if on condition what were the particulars thereof. The number of persons on said list is 1922.

Said exhibit in full is on file in the Court of Claims, but, by consent, is not printed here in full.

266½ PLAINTIFFS' EXHIBIT L.

This exhibit is a list of North Carolina Cherokees who removed to the Cherokee nation on various dates between June 8, 1881, and December 7, 1881, under an act of the national council approved December 3, 1880. Said list shows the number of families, the name of each person, the nativity, age and sex. 170 persons are on said roll and it appears that 30 persons paid for their transportation.

This exhibit in full is on file in the Court of Claims, but, by consent, is not printed here in full.

267 & 268 PLAINTIFFS' EXHIBIT M, MARCH 29, 1899.

Delawares.

No.	Name.	Dead.	Living.
1	Milisa Hill	1	
2	Parcheparkelarqua	2	
3	Necontoohecund	3	
4	Lahpatiah		1
5	John Wilson	4	
6	Waymelartiarqua	5	
7	Jas. Wilson		2
8	Alenahequa, alias Ellenonqua	6	
9	Paacovparnaqua	7	
10	Arthur Armstrong		3
11	Johnny Armstrong	8	
12	Waendditiarque		4
13	Quaenoxie		5
14	Arparcarte		6
15	Quthquecrumsin, alias Jas. Halfman	9	
16	John Neconhecon	10	
17	Arhoquacanah	11	
18	Tanahneshe	12	
19	Nequatreshshe	13	
20	Sheparesh	14	
21	Papamoholland	15	
22	269 Four Miles	16	
23	Arlumquanho	17	
24	Tatlapehelayqua	18	
25	Jumper, alias Mah Taxing, alias Longbone	19	
26	Sam Longbone, alias Mahamataxing	20	
27	Arquatahtiarqua	21	
28	Tueshehing	22	
29	Loowannecumun		7
30	Mary Halfmoon		8
31	Wilson Swannock	23	
32	Dora Swannock	24	
33	Jas. Swannock	25	
34	Katy Swannock		9
35	Hittummahtearqua	26	
36	Ohlemenahoqua	27	
37	Wesonpanaqua, alias widow Wely Halfmoon	28	
38	Harris Halfmoon	29	
39	Tottoelemgonarqua	30	
40	Pattahacaho		10
41	Tahtoexing	31	
42	Tungyounmymenchio	32	
43	Weloquae, Jr., alias Wetoquahing	33	
44	Ohsonsumqooxwho	34	
45	Mooseshenahekeno	35	
46	Sarcahtiacumrin		11
47	Tunggoochqua	36	
48	Carney, alias Henry Wilson	37	
49	Asppehecund, alias Bill Swannock	38	
50	Skekenahoqua		12
51	Tolummekenoqua	39	
52	Waoalingoot	40	
53	Tilhetoxio	41	
54	Endheparkenaho	42	
55	Ahquatahtaharqua		12

Plaintiffs' Exhibit M—Delawares—Continued.

No.	Name.	Dead.	Living.
56	Waendarnahkenaho		13
57	Katricksee	43	
58	Katricksee, child of		14
59	Chukkoquenaha, alias Qutchquoquenaho	44	
60	Shawannaquittut, alias Job Beaver or J. B. Parker		15
61	Teehee	45	
62	Ellekequenaho	46	
63	Parnahoqua	47	
64	Gohetease	48	
65	Papahyahcoowha, alias Alexander Farmhouse	49	
66	Tolacoowha	50	
67	Ahlemustahoqua, Mollie Shaw or Fish		16
68	Ahlemustahoqua, child		16
69	Wamahrquenaho	51	
70	Ahcushenaho	52	
71	Papunaleuumd	53	
72	Skequachuck	54	
73	Merumdahhese, Jas. Coon	55	
74	White Turkey	56	
75	Wawahcumshe		19
76	Toahtooxqua		18
77	Dutch Turkey		19
78	Quillanehe		20
79	Quatie		21
80	Minnehah		22
81	Ningomalahmah		23
82	Jack White	57	
83	Nancy White	58	
84	Parnaahunthequit	59	
85	Big Nigger or Big Nichol	60	
86	Quequachuck, alias Tequaschis	61	
87	Ahalummaalarquar		24
88	Narparlumund		25
89	Ahalummenahohqua	62	
90	Ohlemepahtahmihing	63	
91	Naholepahkeelarqua	64	
92	Lert Chase, alias Sarcartooquathink	65	
93	Kahnahkaalaqua	66	
94	Lungoiltaho	67	
95	Sochakanahing	68	
96	John Sarcoxie		21
97	Quaesheet	69	
98	Nansuckkennnd	70	
99	Kahcatkenahoqua	71	
100	Papechelungonarqua	72	
101	Quatusgtuh, alias Sally Williams	73	
102	Sakehecumun	74	
103	Nerkahnepahkenaho, alias Tutkatalas	75	
104	270 Elizabeth Pechalker, Sen	76	
105	Francis M. Pechalker	77	
106	Asa D. Pechalker	78	
107	Virginia Pechalker	79	
108	Mary Jane Martin		27
109	Barbara Jane Martin		28
110	Eliza Jane Martin	80	
111	Bill Halfmoon	81	
112	Julia Wise, alias Julia Bullett	82	
113	El le we nox ie	83	
114	Ske qua tut	83	

Plaintiffs' Exhibit M—Delawares—Continued.

No.	Name.	Dead.	Living.
115	Wil on Ske qua tut	84	
116	Nul li e nah o qua		29
117	Pa pa la le uund		30
118	Ko chuch que lum go nas quar	85	
119	Delaware Charley	86	
120	Ah pah mah tah ar qua		31
121	Pah che qua ete	87	
122	Pa po ma lum und	88	
123	Pa tun na numd	89	
124	Sar kar to ar qua	90	
125	Ta tah och qua e	91	
126	Oh lut whe na o qua		32
127	Len ne we so so	92	
128	Oua tun da wo ka	93	
129	Oh we la pun na cum um		33
130	Pa huck sit tund	94	
131	Pu ate he ne cum um	95	
132	Oh wo lo lun go na qua	96	
133	Ah gah ke lun go na qua	97	
134	A ha le numd, Edgar Halfmoon		34
135	Oh we che lun go na qua	98	
136	Na en nah ar qua	99	
137	Qua tise	100	
138	Ah pah nu pah ke ne ho	101	
139	Jackson Simons	102	
140	Wey me lun go nar qua	103	
141	A le uum na mah o	104	
142	Wilson Rogers, alias Ne she nah o coo wha	105	
143	Ne cah na pun a qua	106	
144	Forrest Mann, alias Leno		35
145	Ning go nu lun go nar qua		36
146	Ah qua to he cah mah o qua	107	
147	Pa ton na coo wha		37
148	Doctor Tawpese	108	
149	Oh chep pe lun pate, alias Na lah too qua	109	
150	Och qua che		38
151	Len ne watch ty, Harry Arnold		39
152	La nah pi	110	
153	Axh qua, alias Iax qua	111	
154	Jim Snake	112	
155	Mah wet tace		40
156	E lah	113	
157	Alexander Connor		41
158	Elizabeth Thomas	114	
159	Lucy Connor, Mrs. Snake		42
160	Alexander Journeycake	115	
161	Maria Partridge		43
162	David Thomas		43
163	George Moonshine		44
164	Nancy Cook	116	
165	William Long	117	
166	Katy Cetchum Long	118	
167	Nancy Long		45
168	James Irvin Long		46
169	John Kenney		47
170	Eliza Kinney		48
171	Billy Paschal	119	
172	Wa lus lah oh qua	120	
173	Wa lu dah que nah o, alias Na un dah que naho	121	

Plaintiffs' Exhibit M—Delawares—Continued.

No.	Name.	Dead.	Living.
174	Kat kah pun nar qua	122	
175	Pa mah tah oh qua, alias Betsy Jackson	123	
176	Polly Secondine	124	
177	Louisa Secondine		48
178	Ta lah whe nund	125	
179	Big Beaver		49
180	Lon pa na cund	126	
181	Te ki a pah ke cum un	127	
182	A le pah ke non, alias El le pah ke nah o	128	
183	Te ki ete parme scot	129	
184	David B. Ketchum	130	
185	Mary Whitewing	131	
186	Old Horse	132	
187	271 Ning go mo qua e	133	
188	Ning go mo qua e	134	
189	Paw ha too wha	135	
190	O no qua tah pem a cum un	136	
191	Little Jonas, alias Pa shoo wha	137	
192	Tuh loo qua	138	
193	Ning go me numd, Geo. Washing		50
194	Que lup pe na ach qua	140	
195	Os kas que non o qua	141	
196	Tus see nee	142	
197	George Wilson		51
198	Wil le nah		52
199	Wilson Sarcoxie, Jr	143	
200	Par ke nar o	144	
201	Asp pe pa ke now o	145	
202	John T. Smith	146	
203	Sallie O. Smith		52
204	Thos. O. Smith	147	
205	Wm. O. Smith		53
206	Eu lah lie Smith	148	
207	Emma Journeycake	149	
208	Samuel Love, alias Samuel Bufflo		54
209	Wah ho ney	150	
210	Ah pah me mah o	151	
211	Hah poo wha	152	
212	Ah qua to ar qua	153	
213	Pa tah to ace	154	
214	Duck qua e, alias Too qua e	155	
215	Qua chuck, alias Qua chuck	156	
216	Pome hic cum um	157	
217	Wos ke pah coo wha	158	
218	Pa mah le mah	159	
219	Kus ke ke hic cum un John Young		55
220	Kee ke she lay qua	160	
221	Jewsharp Lieut	161	
222	Wa ha pu pan coo whe	162	
223	Ah pah ma le nah o qua	163	
224	Ning go mah prin na qua		56
225	Qua chush tut		56
226	Pa pa ma too numd	164	
227	Such ke hing	165	
228	Nancy Secondine	166	
229	Matilda Secondine	166	
230	Hon ho ar cum she, alias An coo ar cum she	167	
231	Che ton e cum un	168	
232	Kos ke coo wha	169	

Plaintiffs' Exhibit M—Delawares—Continued.

No.	Name.	Dead.	Living.
233	Che we she	170	
234	Pa che he la qua	171	
235	She wan na coox qua (F. M.)	172	
236	To hun doox wha, alias Young Wilson	173	
237	Ne lah che pah Ke nah o		57
238	Tate cah e pal coo wah, alias Big John	174	
239	Ah quail pun dah kah o qua	175	
240	Sa ke lun go maxing	176	
241	Mary Longbone	177	
242	Wind, alias Charfer John Wind		58
243	John Journeycake	178	
244	Sally Journeycake	179	
245	Sally Raccoon	180	
246	Betsy Hill	181	
247	Virginia Hill		59
248	She wau na coo qua (M. C.)	182	
249	Ferry Boy	183	
250	Pah yac sit tah oh qua	182	
251	Ah qua tah pun nah qua	183	
252	General Jackson	184	
253	Wa num ny mah o	185	
254	Pup pah me numd	186	
255	Na kees kund	187	
256	Kalum me lun fo nar qua	188	
257	Koot kah pah noo wha		60
258	Oheve ah ah me numd	189	
259	Ka ki ets, alias Kar cas cate	190	
260	Colonel Jackson		61
261	Sa ki qua hing	191	
262	Betsy Shawnee	192	
263	John Shawnee	193	
264	John White	194	
265	Susan Shawnee	195	
266	Pa mah pun John Bill		62
267	George Swannock		63
268	Tul li te ar qua	196	
269	Ning go mah pun ar qua		64
270	272 El le mah ho qua	197	
271	Kee sah tah axh qua, alias Polly Ketchum	198	
272	Ah lah lu qua	199	
273	Gua	200	
274	Ah mick ah nuse	201	
275	Un da lum mah	202	
276	Wal we la lum nud	203	
277	Mary Ketchum	204	
278	Dick Brown	205	
279	Pupo tuck ke no	206	
280	Two Toes	207	
281	Sa car lu lah	208	
282	Jane Brown	209	
283	John Q. Connor, alias Mitchell Carleton		65
284	Julia A. Beaver, alias Virginia W. McGullough	210	
285	George Mitchell Connor		66
286	Sax se, alias Lucy Jane c		67
287	Sally Moonshine		68
288	Big Shawnee	211	
289	Julia Ann Williams	212	
290	Ester Ann Brown	213	
291	Kee way che	214	

Plaintiffs' Exhibit M—Delawares—Continued.

No.	Name.	Dead.	Living.
292	To la ma te oh qua	215	
293	We che pah kee xing, alias William Sarcoxie	216	
294	Wah na we nah o qua	217	
295	O we la le mah	218	
296	Tus pah lah too	219	
297	Capt. Moonshine	220	
298	Pa che pah ke can	221	
299	Leonard Suake	222	
300	Pa lup po Snake	223	
301	Sampson Snake	224	
302	Let teese	225	
303	Ton gon qua	226	
304	S Lettuse	227	
305	George Williams	228	
306	Wis ke lum go	229	
307	Tup pe he cum un	230	
308	To hum dah nah coo wha	231	
309	Ne con ar te ar qua, alias Qua chuck		69
310	Lucinda Marshal	232	
311	Ah sax coo wha	233	
312	El le me rial o qua, alias Ephraim Everett	234	
313	Po har ko wha, alias Calvin Evaette		70
314	Ka la lum no, alias Fremont Everett	235	
315	Nah le nah o qua	336	
316	George Connor	237	
317	Malinda Connor	238	
318	Susanna Connor		71
319	John A. Connor	239	
320	Jane Connor		72
321	Mary Gillis Rogers		73
322	Sophronia Rogers	240	
323	Ah quail par lu	241	
324	Que lup pe pah ke la que	242	
325	Widow Newcomb	243	
326	Zack Newcomb	244	
327	John Taylor Newcomb, left the Cherokee nation, and his whereabouts are unknown		
328	Cyrus Newcomb	245	
329	O che e show	246	
330	Wa le que na xing, alias Robert Wilson	247	
331	Tot e ki e pah ke nah o	248	
332	Ta le nah e qua	249	
333	Tot ki e now o qua	250	
334	Kun Zier, alias Qua sha que cum un at Anadarko, I. T.	251	
335	Oh quan chis, alias Sallie Hill	252	
336	John Moses	253	
337	Qua tun da, Mrs. Chas. Bennett		74
338	Wm. Shaler		75
339	Mary Bezion	254	
340	Stephen Bezion		76
341	Gua	255	
342	James Ketchum	256	
343	Elizabeth Connor Ketchum		77
344	Hester Ann Ketchum		78
345	Virginia A. Ketchum	257	
346	Thomas S. Ketchum		79
347	Amanda Ketchum		80
348	Cassandra Ketchum	258	
349	Jas. Ketchum, Jr.		81

Plaintiffs' Exhibit M—Delawares—Continued.

No.	Name.	Dead.	Living.
350	Silas Hamilton Connor Ketchum		82
351	Amelia Fairfield Ketchum	259	
352	Big Field	260	
353	273 Ar cus sha pun nah qua	261	
354	Pa che lun go na xing	262	
355	O we ar e numd	263	
356	Wey looholland		83
357	Chuck que lun go na qua	264	
358	John Swannock		84
359	Par ke now	265	
360	Swannock (child)	266	
361	John Wolf	267	
362	Laura Bullit	268	
363	Lizzie Wilson Bullit	269	
364	John Love, alias Buffalo	270	
365	Thomas D. Anderson		85
366	James Anderson	271	
367	Mary Ann Willman	272	
368	Pu ate pah coo wha	273	
369	Mixech lay che	274	
370	Nancy Wild Cat	275	
371	Lucy Wild Cat	276	
372	Che tun nah pun na qua	277	
373	Sa con nah ne cund	278	
374	Ocxh un nah kee nah o	279	
375	Lucinda Connor Collins		86
376	Frenchman		87
377	Nig go pah ke cah o	280	
378	Len ne we nund		88
379	Ning go mah ta a qua	281	
380	Nancy Miller		89
381	Silus Miller		90
382	Susan Lewis	282	
383	Que she qua he	283	
384	Martha Jacobs	284	
385	Oh lum me cum un	285	
386	Pah cun da lum ah	286	
387	Yame qooh qua	287	
388	Oh we la pun nah qua		91
389	La la e bund	288	
390	George Lucason	289	
391	Oh lu now oh qua	290	
392	Nun go now oh qua	291	
393	Wah e nah o		92
394	Loo na we cum un	292	
395	Toteki oh who (alias John Paschael)		93
396	James Connor	293	
	Mrs. James Connor		
397	Qua ta too, alias Yua la wut		94
398	Willie Connor, Willie McEnin		95
399	William Marshal Connor (Washer)		96
400	Rosanna Marshal		97
401	John Marshal		98
402	Polly Marshal		99
403	Charles H. Armstrong		100
404	Mary E. Armstrong		101
405	Maria L. Armstrong	294	
406	Caroline Armstrong		102
407	Lillie Ann Armstrong		103

Plaintiffs' Exhibit M—Delawares—Continued.

No.	Name.	Dead.	Living.
408	Katy Alice Armstrong		104
409	Mary Armstrong	295	
410	Ah pah mah lum mah		105
411	Ah pah me to na qua, alias She co lis	296	
412	Suck ke lun gon	297	
113	Pah mah le qua		106
414	Isaac Journeycake, Sr	298	
415	Nancy Journeycake	299	
416	Mary Journeycake, Mrs. Dr. Allen		107
417	Angeline Journeycake	300	
418	Joseph Journeycake		108
419	Isaac Journeycake, Jr		109
420	Rua we shon	301	
421	Tee tuck ty	302	
422	Che lu les	303	
423	Mo she he crim un	304	
424	Ah sah kah le cum un	305	
425	Jas. Wolf	306	
426	Rachel Wolf		110
427	Henry Wolf		111
428	Elizabeth Wolf, alias Jane W		
429	Mah tah tu ace		
430	Pa te he car mon	307	
431	Jacob Dick	308	
432	Polly Dick	309	
433	Louisa Dick		112
434	She she	310	
435	274 Ah quail pe tan	311	
436	La ti pa kee nah o	312	
437	Tol loo wha, John Yellow Jacket		113
438	Nat tah lum und	313	
439	John Williams	314	
440	Elizabeth Rains	315	
441	Mary Rains	316	
442	Julia Noah Rains		114
443	Joseph Armstrong	317	
444	Nancy Armstrong	318	
445	Penanders Armstrong	319	
446	Sophia Armstrong		115
447	Emma Armstrong	320	
448	Thompson Smith		116
449	Kar pace non	321	
450	Nah lah e lun go na qua	322	
451	Ning go ma le nuned	323	
452	Child not named		
453	End har toar qua	323	
454	Kar face qua		117
455	Qua tut	324	
456	Nancy George	325	
457	Sarah Ann Cokely	326	
458	Josephine, alias Betsey Sykes		118
459	Nancy Russel	327	
460	Tol le ear pi, Leute John Stout		119
461	Koot te hese, alias Jacob Easy	328	
462	Qua she she		120
463	Pa too holland	329	
464	Oh we le nar qua	330	
465	Hannah Sykes		121
466	Eda Sykes		121

Plaintiffs' Exhibit M—Delawares—Continued.

No.	Name.	Dead.	Living.
467	Pa tal e case	331	
468	A quail pe nah o		122
469	Chuck pe he mah o, alias Auch pake nah o	332	
470	Daniel Anderson		123
471	Eliza Bullit	333	
472	Geo. Bullit, Jr		124
473	Eliza Bullit, Lizzie Coker		125
474	Nelson I. Tanner		126
475	Rachel A. Tanner		127
476	Charles V. Tanner		228
477	Ada B. Tanner	334	
478	Lavinia Tanner		228
479	Josiah Berryman	335	
480	Tung qua chuch		229
481	John Secundine		230
482	Lah lush	336	
483	Took cah cum shy	337	
484	Qua chuch	338	
485	E qua wa tise	339	
486	Wind set tund	340	
487	Wind da a lay qua		231
488	O we yah whe cund	341	
489	Loo ahe ca oh qua	342	
490	To lun mah pun a cum un		132
491	Wey un dah nah coo wha		133
492	Big Birds	343	
493	R. H. Leach	344	
494	Betsey Longbone	345	
495	Cor cy la lum un	346	
496	Doe Sticks, alias Ning go me tixie	347	
497	To ki o holland	348	
498	Po mar to ar qua, alias Partit Longbone	349	
499	Little Buffalo	350	
500	Caroline Buffalo		134
501	Simon Buffalo, Love		135
502	Susan Buffalo, Norwood		136
503	Melinda Buffalo	351	
504	Mary Buffalo	352	
505	Mary Newcomb		137
506	Hamelton Newcomb, Tom Newcomb		138
507	Joseph Newcomb	353	
508	Henry Newcomb	354	
509	Lincoln Buffalo		139
510	Wilson Love	355	
511	Margaret Snake		140
512	Sam Lucas, alias Sam Locust	356	
513	Koot to lun go nar qua	357	
514	John Lucas, alias Locust	358	
515	Franklin Lucas, alias Locust		141
516	Qua chuch, alias Little Girl	358	
517	Na mee non	359	
518	275 Now no no bua e	360	
519	Jane Ketckum		142
520	Joshua Wilson		143
521	Ah pah che lay qua		144
522	Jim Brown	361	
523	John Brown		145
524	Pa pa ta no ke no	362	
525	Na no la le mund	363	

Plaintiffs' Exhibit M—Delawares—Continued.

No.	Name.	Dead.	Living.
526	Mary Ann Fish		146
527	Wamepah ke nah o, alias Loosey	364	
528	Par mo ha Longbone	365	
529	John Noah	366	
530	Ah ha le mah que nah o	367	
531	Oh que o lay qua	368	
532	Pa mah cum she	369	
533	Susan Pa mah cum she	370	
534	Oh wel lun noox qua		147
535	Pa tah to ha lay qua	371	
536	Susan		
537	Abram Haff	372	
538	Tuck kee lun go nah qua	373	
539	Mam ka noo wha	374	
540	Es pe lun go nar qua	375	
541	Qutch que cum un		148
542	Pame he cund	376	
543	Ka non che lun gon	377	
544	Qual lo sho, Mary	378	
545	Che ton ne car pi, alias Big Stout		149
546	John Thomas	379	
547	Ne con he car pi, alias Little Bullit	380	
548	Al lum ni mah koox qua		150
549	Emd har ti tah a qua	381	
550	Ah ha le mund		151
551	Wm Alltime	382	
552	Jane Shawnee		152
553	Ne co to way she	383	
554	Ko tah ti an	384	
555	Wee tah coo wha	385	
556	Mary Bullit, Mary Halleck		153
557	Pa ma lum mah	386	
558	Wun dah que non	387	
559	Geo McCullough	388	
560	John File	388	
561	Edward Wilson	389	
562	Ning go me Peter, John Peterson		156
563	Hilas Peter	390	
564	Quafte	391	
565	We che pame she	392	
566	Qua, alias Big Woman	393	
567	Nah nah che nund, John McCadting		155
568	A le mah ti ar qua		156
569	Gustavus Davis, alias Wa le car pi	394	
570	Nancy A. Ketchum	395	
571	Elizabeth Ketchum	396	
572	Mary Jane Ketchum		157
573	Melinda Ketchum	397	
574	Julia A. Ketchum	398	
575	Olive Ann Ketchum	399	
576	Thomas C. Ketchum		157
577	Nancy S. Ketchum	400	
578	John Watson Ketchum		158
579	Ah sah kah pun nar qua	401	
580	Jim Shaw		159
581	Qua wee sa	402	
582	Serc see	403	
583	Pah o le nah o		160
584	Pa che pah ke la qua		161

THE CHEROKEE NATION.

Plaintiffs' Exhibit M—Delawares—Continued.

No.	Name.	Dead.	Living.
585	William Worrell	404	
586	Matilda Worrell	405	
587	Ben Holland	406	
588	Cha ni non	407	
589	Julia George Sen	408	
590	John George	409	
591	John Thomas, M. C	410	
592	Pah mun ne koox wha, alias Big Buffalo	411	
593	Nei nah heese	412	
594	Wa ne lin go na hing	413	
595	Mary Wright, alias Ke ki she na ki no	414	
596	Ben Wright	415	
597	Sophia Gillis	416	
598	Widow Necon hecon, alias Che le har qua	417	
599	James Wilson, M. C		162
600	Wis ke par ke nah		163
601	276 Mary Secondine		164
602	Solomon Armstrong		165
603	Flat Foot	418	
604	My a to use	419	
605	Wey le o goox mund	420	
606	We toque	421	
607	Ning go mah toce	422	
608	Ning go mah que no	423	
609	Clara Wilson	424	
610	Ke ke she no	425	
611	A ha le mund	426	
612	Ning go mun ox koo qua	427	
613	Eliza Edgar	428	
614	Wame sut to oh qua, alias We le chane na okqua	429	
615	E lah tut, alias Wa me lin go na hing	430	
616	Sally Drew, alias El lar ti ar qua	431	
617	Gate Post, alias Sa lu loo ke lund	432	
618	I a la qua	433	
619	Qutch que par coo wha	434	
620	Sally Day, alias Sally Connor	435	
621	Suze Miller		166
622	Mary A. Wilson Day		167
623	James Day	436	
624	Lillie Ann Day		168
625	Lul le e car qy Day		196
626	Andrew M. Wilson Day		160
627	Nancy, alias Mary Anson		171
628	Na poo wha		172
629	Me mum dy, alias Ah qua chois tut Snake	437	
630	Ah mung gu nah o	438	
631	Tundia	439	
632	Ning un oh kee no	440	
633	Moo se ha cund, Elkhair		173
634	Co cul lup poo wha, Chas. Elkhair		174
635	Wa me pah ka nah o	441	
636	Pa tol le mah, alias Pa tol le nah o		175
637	Martha Edger	442	
638	Rebecca Lucas	443	
639	Tul lah tah a la qua	444	
640	Joe Partridge	445	
641	Jane McCollough	446	
642	John Willie McCollough		176
643	Hilas Wilson McCollough	447	

Plaintiffs' Exhibit M—Delawares—Continued.

No.	Name.	Dead.	Living.
644	Carrie Wilson McCollough	448	
645	Anderson McCollough, alias Jac McCarty		187
646	Thos. Lee McCollough	449	
647	Lizzie McCollough	450	
648	Wis ke par ke nah o	451	
649	John Wilson McCollough	452	
650	Len no we shy	453	
651	Til lah que nah o	454	
652	Par tar que non	455	
653	Tace co me cum un, alias Little John Sarcoxie, Jr.		178
654	Elizabeth Andrew		179
655	Pa tun na mah o	456	
656	We ta a la qua	457	
657	Lillie	460	
658	Wa me pah ku nah o	461	
659	Aah pah mo nah o	462	
660	Nancy C. Smith	463	
661	Wa la le mah, alias Eliza Wilson	464	
662	George Washington		180
663	Nancy Washington	465	
664	Qua tun dut	466	
665	William Washington	467	
666	Charles Washington	468	
667	Mary Washington	469	
668	Francis Washington		181
669	Julia Washington		182
670	John Washington		183
671	Albert Washington		184
672	Edson Washington		185
673	Ryland Washington		186
674	Sarah Washington		187
675	Cyrus Washington		188
676	James Washington		189
677	Me num dah, alias Sar con oh kee non	470	
678	Os par lae nah		190
679	Soldier		191
680	Wes ke lee tah		192
681	Simon Ketchum	471	
682	Best Quality	472	
683	Pa tar le nah o	473	
684	277 Fillmore Secondine		173
685	Rachael Secondine	474	
686	Wilson Secondine	475	
687	Qua ten dit		174
688	Sam Longbone, Sr., alias Jumper Andy Mahtaxing	476	
689	Tus cus que car pi	477	
690	A qua te a lay qua	478	
691	Young Martin	479	
692	Chuck ko pim ar qua	478	
693	Nicholas Hill	479	
694	Til le pah coo wha, John Caps		175
695	Ah sah ke pah ke nah o	480	
696	John Kinney		176
697	Curley Head		177
698	Ka non che non		178
699	Julia Ann Curleyhead	481	
700	Ske har qua		169
701	Lottie Curleyhead	482	
702	Koo to par cus	483	

Plaintiffs' Exhibit M—Delawares—Continued.

No.	Name.	Dead.	Living.
703	Dawson Curleyhead, Albert	484	
704	Tal le qua		180
705	La la we non	485	
706	Muck kee nah tah ace	486	
707	Moosh ha que mund	487	
708	Ke she pah ke nah e	488	
709	Oh we le lun go nar qua		181
710	Ke kast koo wha		182
711	Wa mah pe tah o	489	
712	Pa che ka took wha	490	
713	Jacob Park	491	
714	Car pace qua, alias Nu par ke mah o	492	
715	Pa me lun go na hing	493	
716	Ah le nah o qua	494	
717	Pup pa me numd	495	
718	Ning go me hing	496	
719	Te lah pah na qua	497	
720	Sa ke lun go na qua	498	
721	Ar sun cape hund	499	
722	Wis ke par ku non	500	
723	To lum cok xo lund	501	
724	Chee lunze	502	
725	Captain Anderson Sarcoxie	503	
726	Wa me na oxh pua	504	
727	Moosh he cum un	505	
728	Jacob Eueas	506	
729	Ar sah kee na o	507	
730	Ah pah me nah o	508	
731	Melinda Bascomb		183
732	Amanda Bascomb		184
733	Henry Bascomb, Jr		185
734	Mary Yellow Jacket	509	
735	Nah kee nah o qua	510	
736	Muate he non	511	
737	Yellow Jacket Child u e		186
738	B. S. Journeycake, alias Mayeses	512	
739	Yellow Leaf, alias We sah e pah ke cum un	513	
740	Lemuel P. Ketchum		187
741	Ale pah ke nah o	514	
742	Pa me le mah, alias Nuch pa le mah	515	
743	Jonas Ketchum	516	
744	John Redman	517	
745	Tenn dook wah, alias Ya lame cans and mule	518	
746	Ne lah tah que nah o, alias Sally Simons	519	
747	E yar tup, alias Tom Wilson		188
748	Solomon Love, alias Solomon Buffalo		189
749	Jim Simons	520	
750	Tun da la qua e	521	
751	Al la ma ah la qua		190
752	Ween dah coo pah na cum un	522	
753	Le san it	523	
754	Ta a lete	524	
755	Mack a lete	525	
756	Louisa Simons		191
757	Oh lu non	536	
758	To noose white	527	
759	Christopher Snake	528	
760	Kee shaw le quah	529	
761	Ma cum chis	530	

Plaintiffs' Exhibit M—Delawares—Continued.

No.	Name.	Dead.	Living.
762	Joseph Griffy	531	
763	Pal me la oh qua, alias Hattie	532	
764	So ku par kee cum un	533	
765	Elias Griffy	534	
766	Jim White	535	
767	278 Os kas ke par kee no	536	
768	Oh le non	537	
769	Tot ka e nah o qua		192
770	Moc ca sin	538	
771	Wa lun dah kah o qua	539	
772	Po me non	540	
773	Ween dox quaise	541	
774	Quotch quo ti as qua		193
775	Mem da lah	542	
776	Now to pa loo wha	543	
777	Noon da whe cum un	544	
778	Tel le car pi	545	
779	Thomas Secondine		194
780	Jane Secondine		195
781	Annie Secondine		199
782	Wa lah to aze	546	
783	Pa pa tooxo hund, alias John Delaware	547	
784	Wa sah e pacoo wha	548	
785	Jim Bob	549	
786	A ha la ma le mah o	550	
787	Ta ha le nah o quah	551	
788	R. J. E. Journeycake	552	
789	Rachael Journeycake	553	
790	Narcissa Journeycake	554	
791	John Bullit, Sr	555	
792	Nancy Louisa Bullit	556	
793	Qua char ti ar qua	557	
794	John Hill		197
795	Doctor Block	558	
796	Eliza Block		198
797	Oh ne la le mah	559	
798	We sah a te arqua	560	
799	Qua lup pah pun na qua	561	
800	Susan Beaver, alias Mem da la qua	562	
801	Nancy Ketchum, alias Cabbage qua	563	
802	Wild Cat	564	
803	Al le mah pah ke nah o	565	
804	William Riley Ketchum	566	
805	Lucy Ketchum	567	
806	Nancy Ketchum	568	
807	Joel Ketchum	569	
808	Caroline Ketchum	570	
809	Absolom Ketchum	571	
810	Henry Clay Ketchum	572	
811	George Ketchum	573	
812	Louisa Beever ox Love	574	
813	Mary Jane Beaver Oh how da pe to	575	
814	Virginia Beaver, alias Ne can se pat kee no	576	
815	Ne sha pun a qua		198
816	Wa we la lum und, alias John Rogers	577	
817	Captain Fall Leaf	578	
818	Katy Fall Leaf	579	
819	Sa kah lux qua		199
820	Pa tale cum un George Falleaf		200

Plaintiffs' Exhibit M—Delawares—Continued.

No.		Name.	Dead.	Living.
821		An no ho co pun a qua, alias Lucy Fall Leaf		201
822		Oh tak ace	580	
823		Wol lup pa coo	581	
824		Anna hie cund	582	
825		Wa la pah ke hing	583	
826		Pe a tah pe a she	584	
827		Moo sha ta wan na cum she	585	
828		Moo sow a wan a pea she	586	
829		Wey sah ah hah pus kah kah	587	
830		Su Bier, alias Ceaser		202
831		Wey sha a wan a cumshe	588	
832		Pah cat pea she		202
833		Butcher	589	
834		Pah mah cum she	590	
835		Mah co tah wah pea she	591	
836		Wey she pah pe a she kah	592	
837		Ne lah che non	593	
838		Ke she lem go nah qua		203
839		Calk che que now o		204
840		Jo lus (Julius)		205
841		Ah pah nu non oh qua	594	
842		Qoa ten dut		206
843		Swan muck, alias Shang-hai	595	
844		Joseph Thompson	596	
845		Quah tal le hase	597	
846		Fep pam nook koo	598	
847		Wa lahtah ace		207
848		We sah e pah ke nah o		208
849		Sha wan na koox wha	598	
850	279	Pa mah pun nox qua	599	
851		Lem ba lease	500	
852		Ning go pun ar qua	601	
853		Pa nah tah a cum un	602	
854		So ca a lah too		209
855		We tah a lah too		210
856		Ice Wilson		211
857		Ne she nah tease	603	
858		We le pah ke nah o, alias French Wilson, widow	604	
859		Wa le pah ke kund	605	
860		Pa kae tah pea she	606	
861		Pa ke ton e xing	607	
862		Wa me neah	608	
863		Os par to ar qua	609	
864		Shop pa a se	610	
865		Ah pah me pah ke nah o		212
866		Pa par me se	611	
867		Puck qua	612	
868		Che lun deep	613	
869		Robert Lundy		213
870		Louisa Lundy		214
871		Mary R. Lundy	614	
872		Rosa E. Lundy		215
873		Edward E. Lundy		216
874		Henry Armstrong		217
875		Lucy Jane Armstrong	615	
876		Albert Armstrong		218
877		Jacob Linneas, alias Wa ma a lah too	616	
878		Samuel Moses		219
879		George F. Moses		220

Plaintiffs' Exhibit M—Delawares—Continued.

No.	Name.	Dead.	Living.
880	Henry W. Moses		221
881	Na cooch che	617	
882	Ske kat lay qua	618	
883	Cha tak wa pea	619	
884	Thomas Walker		222
885	Ke lah wa sah	620	
886	Wen thow be ah she Kah	621	
887	Bull	622	
888	Na o pou hol lund	623	
889	Tah o wha	624	
890	She wan na koox qua	625	
891	Os kos ke leen go nor a qua	626	
892	Eliza Cat	627	
893	Andrew Miller		223
894	Sally Hill Secondine	628	
895	Jacob Miller, alias Jacob Secondine	629	
896	Samuel Miller, alias Simon Secondine	224	
897	Katy Miller, alias Katy Secondine		225
898	Stephen Miller		226
899	Lucinda Miller		227
900	Capt. John Connor	630	
901	Char Lottie Connor	631	
902	John Bullit, Jr.		228
903	Black Beaver	632	
904	Josiah Anson	633	
905	James Harrison	634	
906	Ah pah ma le mah		229
907	Henry Harrison		230
908	Harrison Child	635	
909	Eliza Ketchum	636	
910	Nat o ti ar qua	637	
911	Qua ta che hease	638	
912	Arch na nah qu nah o	639	
913	George Cummings	640	
914	Po le toone	641	
915	Tun dah too leen, alias Ten dah loo quae	642	
916	Wa un dah pun arqua	643	
917	Qua na lease	643	
918	Wa ne lun go nar qua	644	
919	Wa wil le tox ie	645	
920	Oh ho le me numd	646	
921	We tah pun ah qua	647	
922	Wen da a la qua		231
923	Koot te kar pah e, alias Billy Wilson		232
924	Qua ete	647	
925	Charles Journeycake		233
926	Jane Soeia Journeycake		234
927	Emeline Jonneycake		235
928	Adeline E. Jonneycake		236
929	Annie E. Journeycake		237
930	Cora Lee Journeycake		238
931	Doctor Houston, alias Doctor Bascomb	648	
932	Abraham Ketchum		239
933	280 Charles Ketchum	649	
934	Ewing, Crompston	650	
935	Sarah Bullit		240
936	William Bullit	651	
937	Amanda Bullit	652	
938	Simon Bullit	653	

Plaintiffs' Exhibit M—Delawares—Continued.

No.	Name.	Dead.	Living.
939	Henry Tiblow	654	
940	Thomas Everett	655	
941	Jane Haff, alias Jane Carleton	657	
942	Elizabeth Carleton		241
943	Mary Haff	658	
944	Cyrus Haff		242
945	Joseph Haff		243
946	Sarah Haff		243
947	Hiram Haff		274
948	William Haff		245
949	Eliza Randall	659	
950	Elvira Hendricks	660	
951	Mary Randall		246
952	Frank Randall		247
953	Munson Randall	661	
954	James Randall		248
955	Eliza Hendricks	662	
956	Harrison Love	663	
957	Martin Beaver	664	
958	Mary Ann Beaver, alias Mary Jefferson	665	
959	Pa too ka qua, alias Ne he lah che pah ke nah o	666	
960	Pa pe me too holland, alias Ah lung or star		248
961	Eliza Jane Fish		249
962	Betsy Marshal	667	
963	Sarah Ann Rawlins	668	
964	Alice Rankins	669	
965	Sally Rankins		250
966	Verily Prudence Rankins		251
967	Henry Zeigler		252
968	Solomon Everett	669	
969	Harriet Moses	670	
970	Mary Stiggers	670	
971	William Adams		253
972	Kate Adams Wifes	671	
973	Rachel O. Adams (Richard C. Adams)		254
974	Horace M. Adams		255
975	Washington Hendricks	672	
976	Israel P. Haff	673	
977	Carrie Haff	674	
978	Edward S. Menager White Turkey		256
979	Eugenia Noah	675	
980	Tot ki e now ah qua	676	
981	Julius Armstrong	677	
982	Florence Worrell		257
983	John D. Marker	678	
984	Tom Hill	679	
985	Al le nah tah o qua, alias Alar to ur qua	680	

280½–284 PLAINTIFFS' EXHIBIT N.

This exhibit is a register of the names of members of the Shawnee tribe of Indians who have moved to and located in the Cherokee nation, Indian Territory (prior to the 10th day of June, 1871) within two years from the 9th day of June, 1869, in accordance with an agreement entered into by and between the Shawnee tribe of Indians and the Cherokee nation of Indians, through their delegations in Washington city, D. C., United States of America, on the 7th day of June, 1869, and approved by the President of the United States on the 9th day of June, 1869, in accordance with the XV article of the Cherokee treaty with the United States, proclaimed August the 11th, 1866. This the 9th day of June, A. D. 1871.

Upon this exhibit is shown the names of each of said Shawnees, who in all are 772 in number.

This exhibit is on file in full in the Court of Claims, but, by consent, is not printed here in full.

285 OFFICE OF THE EXECUTIVE DEPARTMENT,
CHEROKEE NATION, IND. TERR.,
TAHLEQUAH, *Aug.* 14, 1871.

This is to certify that the foregoing is the original "copy of the register of names of the members of the Shawnee tribe of Indians who have moved to and located in the Cherokee nation" in accordance with an agreement made and entered into by and between the said Shawnee tribe of Indians and the Cherokee nation of Indians through their delegates, on the 7th of June, 1869; and that a true copy of the same has been taken and retained in this office; and that on the 4th of August the ratification of the agreement herein mentioned was proclaimed; and that the Shawnees registered have been declared to be Cherokee citizens, it being understood that the ratification is admitted by the United States Government, that there is no bar to the final settlement of the agreement on the part of the United States officials, after the correction of an error in regard to the insertion of names of the delegates making the agreement. There are registered 772 persons, instead of 770, as shown on the original by figures.

In testimony of which I have hereunto set my hand and the seal of the Cherokee nation on this the 14th day of August, A. D. 1871.

(Signed) LEWIS DOWNING,
Principal Chief of the Cherokee Nation.

We, the late chiefs of the late Shawnee tribe of Indians, hereby certify that this is a true copy of the register of the names of the members of the Shawnee tribe of Indians who have moved into and located in the Cherokee reserve, Indian Territory, in accordance with an agreement made and entered into by and between

said Shawnee tribe of Indians and the Cherokee nation of
286 Indians, through their delegations, June the 7th, 1869, and approved by the President June the 9th, 1869.

This the 3d day of August, 1871.

(Signed) GRAHAM ROGERS,
Late Prin. Chief of the Shawnee Tribe of Indians.
CHARLES TUCKER,
Late Ass't Prin. Chief of the Shawnee Tribe of Indians.

This is to certify that the foregoing is a true copy of the original sent to the Hon. Secretary of the Interior, diligently compared, and in all things the same except in the figures, there being 772 names on the original but marked only 770.

Copied and certified to by order of the principal chief:

(Signed) W. L. G. MILLER,
Private Sec. to the Principal Chief.

Tahlequah, C. N., Aug. 13th, 1871.

PLAINTIFFS' EXHIBIT O, MARCH 29, 1899.

An act in relation to persons who have been admitted to citizenship by special acts, etc.

Be it enacted by the national council, That all those persons who have, by special act or otherwise, been readmitted to the rights and privileges of Cherokee citizenship, and who shall fail to return to the nation within six months from the date thereof and thereafter identify themselves with the people of the Cherokee nation by locating permanently, shall be barred such right of citizenship, all provisions to the contrary notwithstanding.

Be it further enacted, That the principal chief cause this act to be published in the *Cherokee Advocate* for six months from date of passage, for the information of those concerned.

Approved, November 28th, 1873.

WILL. P. ROSS.

COMPLAINANTS' EXHIBIT O 1.

Resolution Authorizing the Appointment of Commissioners to Treat with the Delawares.

Resolved by the national council, That the principal chief, assistant principal chief, and three others be appointed by the principal chief as commissioners to [enter] into an agreement with the Delaware delegation in reference to allowing the Delawares to select a reser-

vation from our lands lying east or west of 96° of longitude, according to the provisions of the treaty of July 10th, 1866.

Tahlequah, C. N., November 7, 1866.

JAMES VANN,
President National Committee.
H. D. REESE, *Clerk.*

Concurred.

JOHN YOUNG,
Speaker Council.
R. B. ROSS,
Clerk Council.

Approved.

WM. P. ROSS.

287 *Articles of agreement made this 8th day of April, A. D.* 1867, *between the Cherokee nation, represented by William P. Ross, principal chief; Riley Keys and Jesse Bushyhead, delegates, duly authorized, parties of the first part, and the Delaware tribe of Indians, represented by John Connor, principal chief; Charles Journey Cake, assistant chief; Isaac Journey Cake and John Sarcoxie, delegates for and on behalf of said Delaware tribe, duly authorized, witnesseth:*

Whereas, by the 15th article of a certain treaty between the United States and the Cherokee nation, ratified August 11, 1866, certain terms were provided under which friendly Indians might be settled upon unoccupied lands in the Cherokee country east of the line of 96° of west longitude, the price to be paid for such lands to be agreed on by the Indians to be thus located and the Cherokee nation, subject to the approval of the President of the United States; *and whereas*, by a treaty between the United States and the Delaware tribe of Indians, ratified August 10th, 1866, the removal of the said Delawares to the Indian country south of Kansas was provided for, and in the 4th article whereof an agreement was made by the United States to sell to the Delawares a tract of land, being part of a tract the cession of which by the Cherokees to the United States was then contemplated; *and whereas* no such cession of land was made by the Cherokees to the United States, but in lieu thereof terms were provided, as hereinbefore mentioned, under which friendly Indians might be settled upon their lands; *and whereas* a full and free conference has been held between the representatives of the Cherokees and the Delawares, in view of the treaties herein referred to, looking to a location of the Delawares upon the Cherokee lands and their consolidation with said Cherokee nation: *Now, therefore*, it is agreed between the parties hereto, subject to the approval of the President of the United States, as follows:

The Cherokees, parties of the first part, for and in consideration of certain payments and the fulfillment of certain conditions, hereinafter mentioned, agree to sell to the Delawares, for their occupancy, a quantity of land east of the line of the 96° west longitude, in the aggregate equal to 160 acres of land for each individual of the

Delaware tribe who has been enrolled upon a certain register made February 18th, 1867, by the Delaware agent, and on file in the Office of Indian Affairs, being the list of the Delawares who elect to remove to the "Indian country," to which list may be added, only with the consent of the Delaware council, the names of such other Delawares as may, within one month after the signing of this agreement, desire to be added thereto; and the selections of the lands to be purchased by the Delawares may be made by said Delawares in any part of the Cherokee reservation east of said line of 96° not already selected and in possession of other parties; and in case the Cherokee lands shall hereafter be allotted among the members of said nation, it is agreed that the aggregate amount of land herein provided for the Delawares, to include their improvements according to the legal subdivisions, when surveys are made (that is to say, 160 acres for each individual), shall be guarantied to each Delaware incorporated by these articles into the Cherokee nation; nor shall the continued ownership and occupancy of said land by any Delaware so registered be interfered with in any manner whatever without his consent, but shall be subject to the same conditions and restrictions as are by the laws of the Cherokee nation
288 imposed upon the native citizens thereof: *Provided*, That nothing herein shall confer the right to alienate, convey, or dispose of any such lands, except in accordance with the constitution and laws of said Cherokee nation.

And the said Delawares, parties of the second part, agree that there shall be paid to the said Cherokees, from the Delaware funds now held or hereafter received by the United States, a sum of money equal to one dollar per acre for the whole amount of 160 acres of land for every individual Delaware who has already been registered upon the aforesaid list, made February 18th, 1867, with the additions thereto heretofore provided for. And the Secretary of the Interior is authorized and requested to sell any United States stocks belonging to the Delawares to procure funds necessary to pay for said lands; but in case he shall not feel authorized, under existing treaties, to sell such bonds belonging to the Delawares, it is agreed that he may transfer such U. S. bonds to the Cherokee nation at their market value at the date of such transfer. And the said Delawares further agree that there shall be paid from their funds, now or hereafter to come into possession of the United States, a sum of money which shall sustain the same proportion to the existing Cherokee national fund that the number of Delawares registered as above mentioned, and removing to the Indian country, sustains to the whole number of Cherokees residing in the Cherokee nation; and for the purpose of ascertaining such relative numbers the registers of the Delawares herein referred to, with such additions as may be made within one month from the signing of this agreement, shall be the basis of calculation as to the Delawares, and an accurate census of the Cherokees residing in the Cherokee nation shall be taken under the laws of that nation within four months, and properly certified copies thereof filed in the Office of Indian Affairs,

which shall be the basis of calculation as to the Cherokees. And that there may be no doubt hereafter as to the amount to be contributed to the Cherokee national fund by the Delawares, it is hereby agreed by the parties hereto that the whole amount of the invested funds of the Cherokees, after deducting all just claims thereon, is $678,000. And the Delawares further agree that in calculating the total amount of said national fund there shall be added to the said $678,000 the sum of $1,000,000, being the estimated value of the Cherokee neutral lands in Kansas, thus making the whole Cherokee national fund $1,678,000; and this last mentioned sum shall be taken as the basis for calculating the amount which the Delawares are to pay into the common fund: *Provided*, That as the $678,000 of funds now on hand belonging to the Cherokees is chiefly composed of stocks of different values, the Secretary of the Interior may transfer from the Delawares to the Cherokees a proper proportion of the stocks now owned by the Delawares, of like grade and value, which transfer shall be in part of the *pro rata* contribution herein provided for by the Delawares to the funds of the Cherokee nation; but the balance of the *pro rata* contribution by the Delawares to said fund shall be in cash or U. S. bonds at their market value. All cash and all proceeds of stocks, whenever the same may fall due or be sold, received by the Cherokees from the Delawares under this agreement, shall be invested and applied in accordance with the 23d article of the treaty with the Cherokees of August 11th, 1866.

On the fulfillment by the Delawares of the foregoing stipulations, all the members of the tribe registered as above provided
289 shall become members of the Cherokee nation, with the same rights and immunities and the same participation (and no other) in the national funds as native Cherokees, save as hereinbefore provided. And the children hereafter born of such Delawares so incorporated into the Cherokee nation shall in all respects be regarded as native Cherokees.

WM. P. ROSS, *Principal Chief*,
RILEY KEYS, *Cherokee Delegation*.
JOHN (his x mark) CONNOR,
Principal Chief,
CHARLES JOURNEY CAKE,
ISAAC JOURNEY CAKE,
JOHN (his x mark) SARCOXIE,
Delaware Delegation.

Executed and delivered in our presence by the above-named delegates of the Cherokee and Delaware nations, at the city of Washington, in the District of Columbia, the day and year first above written.

JOHN G. PRATT.
WM. A. PHILLIPS.
EDWARD S. MENAGUS.

Ratified by the national committee June 15, 1867.

SMITH CHRISTIE,
President Nat. Committee.
H. D. REESE,
Clerk Nat. Committee.

Concurred in.

JOHN YOUNG,
Speaker of Council.
S. FOREMAN,
Clerk of Council.

Resolution in Furtherance of the Treaty with the Delawares.

Resolved by the national council, That the principal chief be, and he is hereby, authorized to appoint some suitable person or persons to transcribe the Cherokee census rolls and forward copies of them to the Secretary of the Interior at an early day as it can be done. Also, to call on the Secretary of the Interior for a copy of the Delaware census roll.

Tahlequah, C. N., June 17, 1867.
Approved.

WM. P. ROSS,
Principal Chief.

Stipulation.

It is hereby stipulated and agreed between counsel for the complainants and defendants in the above-entitled cause that the record in said case shall embrace the printed pages in a book entitled "Laws of the Cherokee Nation, passed in the years 1839–67, compiled by the authorities of the national council," printed in St. Louis in 1868, beginning on page 84 thereof with the words "Reso-
290 lution authorizing the appointment of commissioners to treat with the Delawares" and ending at the bottom of page 88 thereof, as "Complainant's Exhibit O 1."

July 30, 1901.

WALTER S. LOGAN,
Attorney for Complainants.
WILLIAM T. HUTCHINS,
Attorney for Defendants.

PLAINTIFFS' EXHIBIT P, MARCH 29, 1899.

An act admitting James Crutchfield to Cherokee citizenship.

SECTION 1. *Be it enacted by the national council*, That James Crutchfield be, and he is hereby, admitted to all of the rights and privileges of citizenship in this nation.

Tahlequah, C. N., Dec. 4, 1877.
Approved.

CHARLES THOMPSON.

An act providing for the appointment of a special commissioner to try and settle claims to Cherokee citizenship.

Whereas, — is of the utmost importance to the Cherokee nation that the claims of certain persons to citizenship hereof be speedily and permanently settled by competent authority: Therefore,

SECTION 1. *Be it enacted by the national council*, That there be, and is hereby, created a special commission to be designated "The commission on citizenship."

The commission on citizenship shall consist of three members, to be nominated and commissioned by the principal chief, with the advice and consent of the senate; they shall constitute a "tribunal of last resort," in the hearing and determining of causes hereinafter designated and none others. The national council in joint session shall elect one of the three commissioners (elect) to act as president.

They shall, at they same time, elect one attorney for the nation, who shall also be commissioned by the principal chief, and who, with the solicitor-general, shall act for the nation in all cases undergoing adjudication by the commission.

The commission on citizenship and the attorney for the nation, before entering upon their duties, shall qualify to support the constitution and laws of the Cherokee nation, and to discharge their duties without fear or favor, and to the best of their ability. The president of the commission on citizenship shall preside at the sessions of the same. In his absence or inability to serve, the senior (by age) member present shall preside. Any two members of the commission shall be competent to transact business.

The commission on citizenship shall have authority to appoint and qualify one clerk and one interpreter and to define their respective duties. They shall also have the right to command the presence and service of the sheriff or his deputy of the district wherein they may hold their session; whenever the services
291 of such sheriff or deputy shall not be available, then they (the commission) may, in their discretion, appoint some other citizen of the nation as a substitute, and who shall act in lieu of a sheriff.

The commission on citizenship shall have cognizance of, and exercise complete jurisdiction over, all cases arising under the constitution and laws of the Cherokee nation involving the right to citizenship of said nation, as hereinafter specified.

1st. Of all cases wherein a claimant to citizenship has applied to the supreme court or to the national council, and wherein the court or council has failed to adjudicate the same, whether it originated in the national council or was transmitted thereto for review from the supreme court.

2nd. Of all cases where the national council has adjudicated the same by a decision adverse to the claimants, and where such rejected claimants have appealed from the jurisdiction of the Cherokee nation to that of the United States subsequent to the date of the Chero-

kee treaty of July 19th, 1866, and whose cases have been reported by the United States agent under instructions from the Department of the Interior to the principal chief and are now on file in his office.

3rd. Of all cases where the claimants have ignored the authorities of the Cherokee nation and appealed to those of the United States.

4th. Of all cases where citizenship has been granted and there is presumptive evidence of fraud having been perpetrated to secure the same; or where citizens of the United States have married into this nation in violation of the law prohibiting the marriage of persons previously married without having obtained a divorce.

5th. Of all cases of persons of African descent arising under the Cherokee treaty of July 19, 1866, where the applicant claims to have complied with the requirements of the treaty, but has failed to receive recognition as a citizen by competent authority.

In decreeing the right to citizenship in the Cherokee nation, the commission shall be governed by the provision contained in the 5th section, amendments to article 3, of the constitution, to wit:

"All native-born Cherokees, all Indians and whites, legally members of the nation by adoption, and freedmen who have been liberated by voluntary act of their former owners or by law, as well as free colored persons who were in the country at the commencement of the rebellion and are now resident therein, or who may return within six months from the 19th day of July, 1866, and their descendants who reside within the limits of the Cherokee nation, shall be taken and deemed to be citizens of the Cherokee nation." And in addition thereto shall include all applicants "*bona fide*" residents who are of Cherokee parentage and who may be of not less than the half blood.

The recognition of the right of citizenship in the Cherokee nation, by virtue of the foregoing provisions, shall not be deemed as conferring the like right upon any person not an Indian who may be connected with such person by blood or affinity, unless such person shall comply with provisions of article 15, chapter 10, new code relating to intermarriage.

The commissioners on citizenship may admit as evidence in any of the cases named herein the oral testimony of witnesses under oath, the decisions, records, or other papers, or the certified copies thereof, in the clerk's office of the national council, or of the supreme court of the Cherokee nation, or other affidavits taken before
292 any court of record in the United States, duly authenticated, pertaining to any case brought before it under this act, and shall give such weight as to the credibility of such evidence, in making up their judgment thereon, as they may deem it entitled to. They may, in their discretion, limit the number of witnesses that may be introduced to establish the same fact in any one case, and fix the period for hearing and determining the same.

The commissioners shall keep in a book to be used for that purpose, a docket of all cases tried, with their decision thereon, a copy

of such decision to be furnished to the claimant, whether admitted or not, and such decision shall be final.

The evidence in every case tried by the commission, shall be carefully arranged, labelled, and numbered to correspond with the docket, and be filed for preservation with the national records.

Any person who shall be guilty of attempting, by bribes, intimidation, perjury, or any manner of unlawful means, to establish the claim of any applicant for citizenship, or by such means to defeat it, shall be deemed guilty of felony, and on conviction thereof by any court of competent jurisdiction shall suffer all the pains and penalties imposed for the commission of such offence in any other case; and if such peson be an attorney, he shall likewise be forever barred from practicing before any of the courts of this nation.

The commission on citizenship shall, for the accommodation of parties, hold their session at Tahlequah and Fort Gibson, the time of meeting and continuance at either of said places to be fixed by themselves: Provided, however, that they shall, within ten (10) days after the approval of this act, hold a preliminary meeting at Tahlequah for the purpose of organizing, when they shall, by public notice, announce the time and place of holding their first session for the trial of cases.

The members of the commission on citizenship shall receive severally for their services the sum of four dollars per day, the attorney, clerk, and interpreter the same (four dollars per day), payment to be made from the general fund, on preferred warrants of the principal chief, based on estimate for services rendered, duly certified by the president and clerk, as the same shall be required by the commission while in the discharge of duty. Witnesses summoned and appearing for the nation shall be allowed the same pay as is allowed witnesses in criminal cases, payable in the same manner upon certificates issued, recorded, and reported by the clerk of the commission.

The commission shall, through the office of the principal chief, and not later than the second (2nd) Monday of November next, report the result of their proceedings for the information of the national council: Provided, that all claimants for citizenship embraced within the provisions of this act who shall refuse or fail to bring their cases before the commission on citizenship for adjudication, and all such as shall be rejected by the commission, shall be held as intruders, and shall be reported by the commission to the principal chief as such, and the principal chief shall at once demand of the Secretary of the Interior or of the President of the United States their immediate expulsion from the limits of the Cherokee nation.

Tahlequah, C. N.

Approved, December 5, 1877.

CHARLES THOMPSON.

293 An act admitting certain persons therein named to citizenship.

SECTION 1. *Be it enacted by the national council*, That the following-named persons be, and they are hereby, admitted to Cherokee citizenship, to wit:

John Coleman and family, and the children of Nancy Quinton, sister to said John Coleman, Alsey Jane Wood, Martha E. Meadows, G. A. D. Donegan, and Andrew Ross and children.

Tahlequah, C. N.
Approved, December 8, 1877.

CHARLES THOMPSON,
Prin. Chief.

PLAINTIFFS' EXHIBIT Q, MARCH 29, 1899.

CHAPTER XIV.—*Enumeration of the Cherokee People.*

Article I.—Taking the census of the Cherokee nation in the year 1880.

SEC. 1. Two experts and responsible persons, who shall be residents of the district from which they are appointed, and one of whom talks (speaks) the Cherokee language, shall be appointed by the principal chief, in each district, are hereby directed and authorized to take the census of their respective districts, between the first day of March, and the first day of May, 1880, and make full and certified returns thereof to the principal chief on or before the first day of June of said year.

SEC. 2. The said census takers, before entering upon the duty hereby assigned them, shall take an oath for the full and impartial and correct performance of the same, as hereinafter defined.

SEC. 3. It shall be the duty of said census takers to make full and complete returns of all persons found residing or sojourning within the limits of their respective districts, at the time of making the enumeration as required by the foregoing section. And said returns shall show the names of all heads of families, giving a complete registration of births, deaths, and marriages; also the age and sex and names of all males above the age of eighteen years; the names of all females above the age of eighteen years; the names of all males under the age of eighteen years; the names of all females under the age of eighteen years; the names, sex, and ages of all orphans under sixteen years; the names of all whites entitled by law to citizenship within the ages above specified; the names of whites not so entitled; the names of all colored persons entitled by law to citizenship within said ages and the names of all such persons not so entitled, and the names of all Indians not so entitled; also a report of the chief productions of agriculture, including number of horses, cattle, hogs, sheep, etc., during the year ending May 1st, 1880.

SEC. 4. It shall be the duty of the principal chief to cause ruled blanks to be prepared, of a suitable and convenient form, and fur-

nished to said census takers for the purpose of making the enumeration herein provided for; and said census takers shall be allowed three dollars per day in the performance of the duties hereinbefore imposed upon them.

SEC. 5. It shall be the duty of the principal chief to cause a summary of the returns of said census to be prepared and laid
294 before the national council, together with the full returns of the same, at the beginning of the annual session thereof in 1880, and which returns shall serve as a basis for apportioning the representation of the several districts of the Cherokee nation in the national council, in accordance with the amendments to the constitution dated November 28th, 1866.

SEC. 6. All persons whose rights to citizenship in the Cherokee nation shall be called into question, and who shall be reported by the persons authorized by this act to take the census of the Cherokee nation, on the list of doubtful persons, shall be required by the principal chief to appear before the commission on citizenship, at Tahlequah, during the month of September, 1880, for the adjudication of their claims to Cherokee citizenship. (Dec. 2d, 1879.)

Article II.—Joint resolution providing for amendments to census rolls.

SEC. 7. Each census roll of the enumeration of 1880 are referred to a joint committee for each district, to be composed of one member from the senate and two members from the council of their respective districts, whose duty it shall be to carefully examine and pass upon each name appearing on said roll, and the names of any persons appearing thereon they may know, or have good reason to believe, are non-citizens and not entitled to appear on said census roll shall be plainly marked in red ink, "*Suspended for examination*," and the names of any person so marked shall not be placed upon the record to be made of citizens of the Cherokee nation by the persons to be appointed for that purpose by the proper authority; and the names of any Cherokee citizens, *bona fide*, whose names have been omitted through an error or mistake of the census takers shall be added to the census roll as a part of the census of 1880.

SEC. 8. The rolls shall be signed and approved by the several committees and returned to the executive department of the nation. (Nov. 8th, 1880.)

Article III.—An act authenticating the census returns of 1880, and providing for a copy thereof.

SEC. 9. The register or schedule of citizens of the Cherokee nation, submitted to the principal chief by the census takers of the year 1880 under requirement of the act providing for taking the census of the Cherokee nation, as the said register or schedule has been examined, revised, or amended by the committees of the present national council duly appointed for the purpose, and by them sub-

mitted to and accepted by this council, is hereby approved as a true and correct list of persons acknowledged and recognized to be citizens of the Cherokee nation, at and within the time the said census was authorized to be taken.

SEC. 10. There shall be made in fair and legible handwriting, and under the supervision of the principal chief, a neat and complete alphabetical transcript, or copy, of all names of citizens and non-citizens to be found in the census returns, revised and amended as before mentioned, with such descriptive matters and things as are attached to each name. The work of making such copy shall be done by two clerks of the executive department, duly appointed and instructed by the principal chief to perform the same, and who
295 shall receive as compensation therefor, when the said work shall have been finished, approved, and filed as provided by this act, the sum of two hundred and fifty (250) dollars each, for which amounts the principal chief is authorized to draw preferred warrants upon the general fund. The said transcript, or copy, shall be made upon blank forms of the like kind furnished the census takers to take the census of 1880.

SEC. 11. When the said copy shall be made and completed as hereinbefore provided, the "returns" of each district, as copied, shall be by the said clerks submitted to the principal chief, duly certified to by them as to pages, number of names in each schedule, and that the copy has been made correctly according to the provisions of this act. When so certified, and upon the examination of the principal chief approved by him, he shall be authorized to endorse the copy of the returns of each district as so approved, and place the same on file in the executive office for safe keeping and general reference under his care and direction.

SEC. 12. Any person, citizen of this nation at the time of taking the census of 1880 (March and April), who shall have been inadvertently omitted to be registered by the census takers or the committee appointed to revise the census, and whose name does not appear enrolled or recorded otherwise, and who shall desire to be enrolled as a citizen, shall be required to make satisfactory showing to the principal chief, by methods and evidence which he may consider sufficient in such case, that such person was a citizen of the nation when the census was being taken, and of what district; and the principal chief is required to report the names of all persons, who shall apply under this section, with the material facts ascertained by him in each case, to the national council of 1881, for their information and action.

SEC. 13. All persons whose names have been reported by the census takers in Schedule 1 as citizens, and whom the revising committee of this council have marked and signified as not entitled to be so returned, shall be summoned by the principal chief to appear before the commission on citizenship at their next September session, 1881, for the adjudication of their claims, according to the provisions of law relating to "doubtful citizens;" and the names of all persons who have appeared or shall appear before said commis-

sion as "doubtful citizens" either by authority of the act of December 3d, 1879, authorizing the taking of the census, not including "new claimants" enrolled in Schedule 4, or by authority of this act, in whose favor the said commission have decided or shall decide, shall be by the executive secretary attached to the official copy of citizens hereinbefore authorized to be made and filed in the executive office.

(Tahlequah, C. N.)
Approved December 9th, 1880.

D. W. BUSHYHEAD,
Principal Chief, C. N.

296 PLAINTIFFS' EXHIBIT R, MARCH 29, 1899.

Acts Admitting to Citizenship.

Admissions and readmissions to citizenship, 1881.

Admitted Conditionally.

Name.	Date of act.
1. Ridge Paschal.	November 8th, 1881.

(Condition of admission.)—That he locate permanently in the nation within twelve months from date of act.

Admitted Conditionally.

Names.	Date of act.
1. Mary Alice Halsel, late " " Crutchfield. 2. W. E. Halsel.	November 18th, 1881.

(Condition of admission.)—That W. E. Halsel comply with intermarriage law, and that they permanently locate in the Cherokee nation within six months from date of act.

Admitted Unconditionally.

Name.	Date of act.
1. Joseph B. Harris.	December 5th, 1881.

Admitted Unconditionally.

Names.	Date of act.
1. Hugh Carrol. 2. Lucy " (wife). 3. Nora " 4. Lizzie " children.	December 7th, 1881.

Admitted Unconditionally.

Names.	Date of act.
1. Samuel Chirley (Cher.) and wife.	December 8th, 1881.
(Children:)	
2. Eliza Chirley.	
3. Onata "	
4. Susan "	
5. Annie "	
6. Frank "	
7. Sam "	
8. Lullu "	
9. Linda "	
(Grandchildren:)	
10. Mary and Jennie Panther.	
11. Charley "	
12. Collin "	

Admitted Conditionally.

Names.	Date of act.
1. Susan N. Dodge.	December 8th, 1881.
(Children:)	
2. Gertrude Dodge.	
3. William "	
(Delawares.)	

(Condition of admission.)—When the above-named parties make full payment to the treasurer of the Cherokee nation, as specified in the agreement between the Cherokees and Delawares of April 8th, 1867, and take the treasurer's receipt for such payment.

297 An act making an appropriation for the relief of North Carolina Cherokees lately removed to this nation.

SEC. 1. *Be it enacted by the national council*, That the sum of two thousand six hundred and eighty-eight dollars be, and the same is hereby, appropriated out of the general fund for the purpose of relieving the present necessities of those of the North Carolina "band" of Cherokees, numbering in the aggregate one hundred and sixty-eight persons, who have lately removed to this nation under an invitation extended them by and through an act of the national council, approved December 3d, 1880, and that the said sum of two thousand six hundred and eighty-eight dollars be paid, share and share alike, to the persons now living and whose names appear as members of this band upon the rolls now on file in the executive department of this nation.

SEC. 2. *Be it further enacted*, That for the purpose of carrying the

provisions of this act more fully into effect the national treasurer is hereby directed and required to divert the sum of two thousand six hundred and eighty-eight dollars out of any monies now in the hands of the subtreasurer at St. Louis, Missouri, belonging to the general fund, and pay the same on the order or warrant of the principal chief at such time and place as he may direct, in equal proportion to each, according to the rolls now on file in the office of the executive.

Approved, December 16, 1881.

D. W. BUSHYHEAD,
Principal Chief.

Acts Admitting to Citizenship.

An act readmitting Joseph Quinton, Lydia Quinton, and Moses Quinton to citizenship.

Be it enacted by the national council, That Joseph Quinton and family (wife, Lydia Quinton; son, Moses Quinton), be and are hereby readmitted to all the rights and privileges of Cherokee citizens, November 15, 1882.

Approved, November 21, 1882.

D. W. BUSHYHEAD,
Principal Chief.

An act to admit Martha Shufeldt and children Laura Ann John, Frank and Percy Shufeldt and Minnie Chouteau to citizenship.

Be it enacted by the national council, That Martha Shufeldt and children, Laura Ann John, Frank and Percy Shufeldt, and Minnie Chouteau, all Shawnee Indians by blood, be, and they are hereby, admitted to all the rights, privileges, and immunities of other Shawnees residence in and citizens of the Cherokee nation on the same conditions imposed by the agreement between the Cherokee nation and the Shawnees, concluded June 7th, 1869, and approved by the President June 9th, 1869; provided, that the persons herein admitted shall pay to the treasurer of the Cherokee nation the sum of one hundred and ninety-five dollars each, the same being the amount *per capita* paid by the Shawnees now citizens of the Cherokee
298 nation; and provided further, that the above amounts shall be paid by each of said Shawnees before any rights shall accrue under this act.

SEC. 2. That M. C. Shufeldt (a white man and father of the above-named children) shall be required to comply with the law of this nation entitled "Intermarriage of white men and foreigners" before he shall be recognized as a citizen of this nation.

Approved, December 9, 1882.

D. W. BUSHYHEAD,
Principal Chief.

Acts Admitting to Citizenship.

Names.	Conditions and remarks.
Date of act, Dec. 6, 1883.	
1. Ida L. Ward, formerly Ida L. Barker (Cherokee). 2. R. J. Ward (husband). 3. Sarah E. Ward. 4. Susan E. Ward. 5. Cora J. Ward. 6. Rob't J. Ward. (Children.)	Provided they move in the nation within one year from date of act.
Dec. 6, 1883.	
1. W. H. Barker, Cherokee. 2. E. C. Barker. 3. S. B. Barker. (Family.)	None.
Dec. 6, 1883.	
1. R. B. Harris and family.	Amending act of Dec. 5, 1881, so as to allow the family a year from this date to move within the nation.
Nov. 21, 1883.	
1. Avi Bailey. 2. Loften Bailey. 3. Mary J. Bailey. 4. Phebie E. Bailey.	None.
Nov. 13, 1883.	
1. Kate Clayweil (late Kate Hastings). 2. Albert G. Maxfield. 3. Anna M. Maxfield. 4. Stepen A. Maxfield. (Children.)	Cherokees by blood.

PLAINTIFFS' EXHIBIT S, MARCH 29, 1899.

Constitution.

The Eastern and Western Cherokees having again reunited, and become one body politic, under the style and title of the Cherokee nation:

Therefore, we, the people of the Cherokee nation, in national convention assembled, in order to establish justice, insure tranquillity, promote the common welfare, and to secure to ourselves and our posterity the blessings of freedom—acknowledging with humility and gratitude the goodness of the Sovereign Ruler of the Universe

in permitting us so to do, and imploring His aid and guidance in its accomplishment—do ordain and establish this constitution for the government of the Cherokee nation.

299 ARTICLE I.

SECTION 1. The boundary of the Cherokee nation shall be that described in the treaty of 1833, between the United States and Western Cherokees, subject to such extension as may be made in the adjustment of the unfinished business with the United States.

SEC. 2. The lands of the Cherokee nation shall remain common property; but the improvements made thereon, and in the possession of the citizens of the nation, are the exclusive and indefeasible property of the citizens, respectively, who made or may rightfully be in possession of them: *Provided*, That the citizens of the nation possessing exclusive and indefeasible right to their improvements, as expressed in this article, shall possess no right or power to dispose of their improvements, in any manner whatever, to the United States, individual States, or to individual citizens thereof; and that, whenever any citizen shall remove with his effects out of the limits of this nation, and becomes a citizen of any other government, all his rights and privileges as a citizen of this nation shall cease: *Provided, nevertheless*, That the national council shall have power to readmit, by law, to all the rights of citizenship, any such person or persons who may, at any time, desire to return to the nation, on memorializing the national council for such readmission.

Moreover, the national council shall have power to adopt such laws and regulations, as its wisdom may deem expedient and proper, to prevent citizens from monopolizing improvements, with the view of speculation.

ARTICLE II.

SECTION 1. The power of this government shall be divided into three distinct departments—the legislative, the executive, and the judicial.

SEC. 2. No person or persons belonging to one of these departments shall exercise any of the powers properly belonging to either of the others, except in the cases hereinafter expressly directed or permitted.

ARTICLE III.

SECTION 1. The legislative power shall be vested in two distinct branches—a national committee and council, and the style of their acts shall be: *Be it enacted by the national council.*

SEC. 2. The national council shall make provision, by law, for laying off the Cherokee nation into eight districts; and, if subsequently it should be deemed expedient, one or two may be added thereto.

SEC. 3. The national committee shall consist of two members from each district, and the council shall consist of three members from

each district, to be chosen by the qualified electors in their respective districts for two years; the elections to be held in the respective districts every two years, at such times and places as may be directed by law.

The national council shall, after the present year, be held annually, to be convened on the first Monday in October, at such place as may be designated by the national council, or, in case of emergency, by the principal chief.

SEC. 4. Before the districts shall be laid off, any election
300 which may take place shall be by general vote of the electors throughout the nation for all officers to be elected.

The first election for all the officers of the government—chiefs, executive council, members of the national council, judges, and sheriffs—shall be held at Tahlequah before the rising of this convention, and the term of services of all officers elected previous to the first Monday in October, 1839, shall be extended to embrace, in addition to the regular constitutional term, the time intervening from their election to the first Monday in October, 1839.

SEC. 5. No person shall be eligible to a seat in the national council but a free Cherokee male citizen, who shall have attained to the age of twenty-five years.

The descendants of Cherokee men by all free women, except the African race, whose parents may have been living together as man and wife, according to the customs and laws of this nation, shall be entitled to all the rights and privileges of this nation as well as the posterity of Cherokee women by all free men. No person who is of negro or mulatto parentage, either by the father's or mother's side, shall be eligible to hold any office of profit, honor, or trust under this government.

SEC. 6. The electors and members of the national council shall in all cases, except those of treason, felony, or breach of the peace, be privileged from arrest during their attendance at elections, and at the national council, in going to and returning.

SEC. 7. In all elections by the people, the electors shall vote *viva voce*.

All free male citizens, who have attained to the age of eighteen years, shall be equally entitled to vote at all public elections.

SEC. 8. Each branch of the national council shall judge of the qualifications and returns of its own members, and determine the rules of its proceedings, punish a member for disorderly behavior, and with the concurrence of two-thirds, expel a member; but not a second time for the same offense.

SEC. 9. Each branch of the national council, when assembled, shall choose its own officers; a majority of each shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members in such manner and under such penalty as each branch may prescribe.

SEC. 10. The members of the national committee shall each receive from the public treasury a compensation for their services, which shall be three dollars per day during their attendence at the

national council; and the members of the council shall each receive three dollars per day for their services during their attendance at the national council: *Provided*, That the same may be increased or diminished by law; but no alteration shall take effect during the period of service of the members of the national council by whom such alteration may have been made.

SEC. 11. The national council shall regulate by law by whom and in what manner writs of election shall be issued to fill the vacancies which may happen in either branch thereof.

SEC. 12. Each member of the national council, before he takes his seat, shall take the following oath or affirmation:

"I, A. B., do solemnly swear (or affirm, as the case may be), that I have not obtained my election by bribery, threats, or any
301 undue or unlawful means, used by myself or others, by my desire and approbation for that purpose; that I consider myself constitutionally qualified as a member of ——, and that on all questions and measures which may come before me, I will so give my vote, and so conduct myself, as in my judgment shall appear most conducive to the interest and prosperity of this nation, and that I will bear true faith and allegiance to the same, and to the utmost of my ability and power, observe, conform to, support, and defend the constitution thereof."

SEC. 13. No person who may be convicted of felony shall be eligible to any office or appointment of honor, profit, or trust within this nation.

SEC. 14. The national council shall have power to make all laws and regulations which they shall deem necessary and proper for the good of the nation, which shall not be contrary to this constitution.

SEC. 15. It shall be the duty of the national council to pass such laws as may be necessary and proper to decide differences by arbitration, to be appointed by the parties who may choose that summary mode of adjustment.

SEC. 16. No power of suspending the laws of this nation shall be exercised unless by the national council or its authority.

SEC. 17. No retrospective law, nor any law impairing the obligation of contracts, shall be passed.

SEC. 18. The national council shall have power to make laws for laying and collecting taxes for the purpose of raising a revenue.

SEC. 19. All bills making appropriations shall originate in the national committee, but the council may propose amendments or reject the same. All other bills may originate in either branch, subject to the concurrence or rejection of the other.

SEC. 20. All acknowledged treaties shall be the supreme law of the land, and the national council shall have the sole power of deciding on the construction of all treaty stipulations.

SEC. 21. The council shall have the sole power of impeaching. All impeachments shall be tried by the national committee. When sitting for that purpose, the member shall be upon oath or affirmation, and no person shall be convicted without the concurrence of two-thirds of the members present.

SEC. 22. The principal chief, assistant principal chief, and all civil officers shall be liable to impeachment for misdemeanor in office, but judgment in such cases shall not extend farther than removal from office and disqualification to hold any office of honor, trust, or profit under the government of this nation.

The party, whether convicted or acquitted, shall, nevertheless, be liable to indictment, trial, judgment, and punishment according to law.

ARTICLE IV.

SECTION 1. The supreme executive power of this nation shall be vested in a principal chief, who shall be styled "the principal chief of the Cherokee nation."

The principal chief shall hold his office for the term of four years, and shall be elected by the qualified electors on the same day and at the places where they shall respectively vote for members to the national council.

302 The returns of the election for principal chief shall be sealed up and directed to the president of the national committee, who shall open and publish them in the presence of the national council assembled. The person having the highest number of votes shall be principal chief, but if two or more shall be equal and highest in votes, one of them shall be chosen by joint vote of both branches of the council. The manner of determining contested elections shall be directed by law.

SEC. 2. No person, except a natural born citizen, shall be eligible to the office of principal chief; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years.

SEC. 3. There shall also be chosen at the same time by the qualified electors in the same manner, for four years, an assistant principal chief, who shall have attained to the age of thirty-five years.

SEC. 4. In case of the removal of the principal chief from office, or of his death or resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the assistant principal chief, until the disability be removed or the vacancy filled by the national council.

SEC. 5. The national council may, by law, provide for the case of removal, death, resignation, or disability of both the principal and assistant principal chiefs, declaring what officer shall then act as principal chief until the disability be removed or a principal chief shall be elected.

SEC. 6. The principal and assistant principal chiefs shall, at stated times, receive for their services a compensation which shall neither be increased or diminished during the period for which they shall have been elected, and they shall not receive within that period any other emolument from the Cherokee nation or any other government.

SEC. 7. Before the principal chief enters on the execution of his office, he shall take the following oath or affirmation:

"I do solemnly swear or affirm that I will faithfully execute the duties of principal chief of the Cherokee nation, and will, to the best of my ability, preserve, protect, and defend the constitution of the Cherokee nation."

SEC. 8. He may, on extraordinary occasions, convene the national council at the seat of government.

SEC. 9. He shall, from time to time, give to the national council information of the state of the government, and recommend to their consideration such measures as he may deem expedient.

SEC. 10. He shall take care that the laws be faithfully executed.

SEC. 11. It shall be his duty to visit the different districts at least once in two years to inform himself of the general condition of the country.

SEC. 12. The assistant principal chief shall, by virtue of his office, aid and advise the principal chief in the administration of the government at all times during his continuance in office.

SEC. 13. Vacancies that may occur in offices, the appointment of which is vested in the national council, shall be filled by the principal chief during the recess of the national council by granting commissions which shall expire at the end of the next session thereof.

SEC. 14. Every bill which shall pass both branches of the national council shall, before it becomes a law, be presented to the principal chief; if he approves, he shall sign it; but if not, he shall return it, with his objections, to that branch in which it may have orig-
303 inated, who shall enter the objections at large on their journals and proceed to reconsider it; if, after such reconsideration, two-thirds of that branch shall agree to pass the bill, it shall be sent, together with the objections, to the other branch, by which it shall likewise be reconsidered, and if approved by two-thirds of that branch, it shall become a law. If any bill shall not be returned by the principal chief within five days (Sundays excepted), after the same has been presented to him, it shall become a law in like manner as if he had signed it, unless the national council, by their adjournment, prevent its return, in which case it shall be a law, unless sent back within three days after their next meeting.

SEC. 15. Members of the national council and all officers, executive and judicial, shall be bound by oath to support the constitution of this nation, and to perform the duties of their respective offices with fidelity.

SEC. 16. In case of disagreement between the two branches of the national council with respect to the time of adjournment, the principal chief shall have power to adjourn the same to such time as he may deem proper; *provided*, it be not a period beyond the next constitutional meeting thereof.

SEC. 17. The principal chief shall, during the session of the national council, attend at the seat of government.

SEC. 18. There shall be a council composed of five persons, to be appointed by the national council, whom the principal chief shall have full power at his discretion to assemble; he, together with the

assistant principal chief and the counselors, or a majority of them, may, from time to time, hold and keep a council for ordering and directing the affairs of the nation according to law; *provided*, the national council shall have power to reduce the number, if deemed expedient, after the first term of service to a number not less than three.

SEC. 19. The members of the executive council shall be chosen for the term of two years.

SEC. 20. The resolutions and advice of the council shall be recorded in a register and signed by the members agreeing thereto, which may be called for by either branch of the national council; and any counselor may enter his dissent to the majority.

SEC. 21. The treasurer of the Cherokee nation shall be chosen by a joint vote of both branches of the national council for the term of four years.

SEC. 22. The treasurer shall, before entering on the duties of his office, give bond to the nation, with sureties, to the satisfaction of the national council, for the faithful discharge of his trust.

SEC. 23. No money shall be drawn from the treasury but by warrant from the principal chief, and in consequence of appropriations made by law.

SEC. 24. It shall be the duty of the treasurer to receive all public moneys, and to make a regular statement and account of the receipts and expenditures of all public moneys at the annual session of the national council.

ARTICLE V.

SECTION 1. The judicial powers shall be vested in a supreme court and such circuit and inferior courts as the national council may from time to time ordain and establish.

304 SEC. 2. The judges of the supreme and circuit courts shall hold their commissions for the terms of four years, but any of them may be removed from office on the address of two-thirds of each branch of the national council to the principal chief for that purpose.

SEC. 3. The judges of the supreme and circuit courts shall at stated times receive a compensation which shall not be diminished during their continuance in office, but they shall receive no fees or perquisites of office, nor hold any other office of profit or trust under the government of this nation or any other power.

SEC. 4. No person shall be appointed a judge of any of the courts until he shall have attained the age of thirty years.

SEC. 5. The judges of the supreme and circuit courts shall be elected by the national council, and there shall be appointed in each district as many justices of the peace as it may be deemed expedient for the

public good, whose powers, duties, and duration in office shall be clearly designated by law.

SEC. 6. The judges of the supreme court and of the circuit courts shall have complete criminal jurisdiction in such cases and in such manner as may be pointed out by law.

SEC. 7. No judge shall sit on trial of any cause when the parties are connected [with him] by affinity or consanguinity, except by consent of the parties. In case all the judges of the supreme court shall be interested in the issue of any cause or related to all or either of the parties, the national council may provide by law for the selection of a suitable number of persons of good character and knowledge for the determination thereof, and who shall be specially commissioned for the adjudication of such case by the principal chief.

SEC. 8. All writs and other process shall run "In the name of the Cherokee nation," and bear test and be signed by the respective clerks.

SEC. 9. Indictments shall conclude, "Against the peace and dignity of the Cherokee nation."

SEC. 10. The supreme court shall, after the present year, hold its session annually at the seat of government, to be convened on the first Monday of October in each year.

SEC. 11. In all criminal prosecutions the accused shall have the right of being heard; of demanding the nature and cause of the accusation; of meeting the witnesses face to face; of having compulsory process for obtaining witnesses in his or their favor; and, in prosecutions by indictment or information, a speedy public trial by an impartial jury of the vicinage; nor shall the accused be compelled to give evidence against himself.

SEC. 12. The people shall be secure in their persons, houses, papers, and possessions from unreasonable seizures and searches, and no warrant to search any place or to seize any person or thing shall issue without describing them as nearly as may be, nor without good cause, supported by oath or affirmation.

SEC. 13. All persons shall be bailable by sufficient securities, unless for capital offenses, where the proof is evident or presumption great.

305 ARTICLE VI.

SECTION 1. No person who denies the being of a God, or future state of reward and punishment, shall hold any office in the civil department in this nation.

SEC. 2. The free exercise of religious worship and serving God without distinction shall forever be enjoyed within the limits of this nation: *Provided*, That this liberty of conscience shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace or safety of this nation.

SEC. 3. When the national council shall determine the expediency of appointing delegates or other public agents for the purpose of transacting business with the Government of the United States, the principal chief shall recommend, and, by the advice and consent of the national committee, appoint and commission such delegates or public agents accordingly. On all matters of interest touching the rights of the citizens of this nation, which may require the attention of the United States Government, the principal chief shall keep up a friendly correspondence with that Government through the medium of its proper officers.

SEC. 4. All commissions shall be "In the name and by the authority of the Cherokee nation," and be sealed with the seal of the nation and signed by the principal chief. The principal chief shall make use of his private seal until a national seal shall be provided.

SEC. 5. A sheriff shall be elected in each district by the qualified electors thereof, who shall hold his office two years, unless sooner removed. Should a vacancy occur subsequent to an election, it shall be filled by the principal chief, as in other cases, and the person so appointed shall continue in office until the next regular election.

SEC. 6. No person shall, for the same offense, be twice put in jeopardy of life or limb; nor shall the property of any person be taken and applied to public use without a just and fair compensation: *Provided*, That nothing in this clause shall be so construed as to impair the right and power of the national council to lay and collect taxes.

SEC. 7. The right of trial by jury shall remain inviolate, and every person, for injury sustained in person, property, or reputation, shall have remedy by due course of law.

SEC. 8. The appointment of all officers, not otherwise directed by this constitution, shall be vested in the national council.

SEC. 9. Religion, morality, and knowledge being necessary to good government, the preservation of liberty, and the happiness of mankind, schools and the means of education shall be forever encouraged in this nation.

SEC. 10. The national council may propose such amendments to this constitution as two-thirds of each branch may deem expedient, and the principal chief shall issue a proclamation, directing all civil officers of the several districts to promulgate the same as extensively as possible within their respective districts at least six months previous to the next general election, and if, at the first session of the national council, after such general election, two-thirds of each branch shall, by ayes and noes, ratify such proposed amendments, they shall be valid to all intent and purposes, as parts of this constitution: *Provided*, That such proposed amendments shall be read on three several days in each branch, as well when the same are proposed as when they are ratified.

306 Done in convention at Tahlequah, Cherokee nation, this sixth day of September, 1839.

GEORGE LOWREY,
President of the National Convention.
HAIR CONRAD (his x mark).
JOHN BENGE (his x mark).
ARCHIBALD CAMPBELL (his x mark).
THOMAS CANDY.
JOHN DREW.
GEORGE GUESS (his x mark).
WALTER SCOTT ADAIR.
YOUNG ELDERS (his x mark).
WILL SHOREY COODEY.
THOMAS FOREMAN.
RICHARD TAYLOR.
THOMAS FOX TAYLOR.
O KAN STO TAH LOGAN (his x mark).
JAMES SPEARS (his x mark).
JOHN SPEARS.
STEPHEN FOREMAN.
YOUNG GLASS (his x mark).
LOONEY PRICE.
TOBACCO WILL (his x mark).
MAJOR PULLUM (his x mark).
MOSES PARRIS.
GEORGE WASHINGTON GUNTER.
KENCH LOGAN (his x mark).
YOUNG WOLF.
JOSEPH MARTIN LYNCH.
SAL LA TEE SKEE WATTS (his x mark).
GEORGE BREWER (his x mark).
JOSHUA BUFFINGTON.
JESSE BUSHYHEAD.
JESSE RUSSELL.
JOHN FLETCHER BOOT (his x mark).
CRYING BUFFALO (his x mark).
DARK FLUTE (his x mark).
OO LA YO A (his x mark).
SOFT SHELL TURTLE (his x mark).
EDWARD GUNTER.
DANIEL COLSTON (his x mark).
LEWIS ROSS.
GEORGE HICKS.
TURTLE FIELDS (his x mark).
ELIJAH HICKS.
TAH LAH SEE NEE (his x mark).
JAMES BROWN.
CHARLES COODEY.
RILEY KEYS.
DANIEL McCOY.
LEWIS MELTON.

307 *Proclamation and Amendments to the Constitution.*

[Adopted November 26, 1866.]

Proclamation by the Principal Chief.

Whereas the national council adopted certain amendments to the constitution of the Cherokee nation and submitted the same to a general convention of the people of the Cherokee nation, called at Tahlequah on the 26th day of November, A. D. 1866, and which said amendments with the preamble thereto attached were in the following words, to wit:

Whereas, by the treaty executed at Washington on the 19th day of July, A. D. 1866, between the United States and the Cherokee nation through its delegation, ratified by the Senate and officially promulgated by the President of the United States August 11, 1866, certain things were agreed to between the parties to said treaty, involving changes in the constitution of the Cherokee nation, which changes cannot be accomplished by the usual mode; and

Whereas it is the desire of the people and government of the Cherokee nation to carry out in good faith all of its obligations to the end that law and order be preserved and the institutions of their government maintained; therefore,

Be it resolved by the national council, That the following amendments to the constitution of the Cherokee nation be submitted to a convention of the Cherokee people, to assemble at Tahlequah, on the twenty-sixth (26th) day of November, A. D. 1866, under the proclamation of the principal chief, and should said amendments hereunto annexed be ratified by said convention, then they shall be officially published and declared by the principal chief to be, and shall constitute, a part or parts of the constitution of the Cherokee nation.

Amendments.

Amendments to article I.

SECTION 1. The boundaries of the Cherokee nation shall be that described in the treaty of 1833 between the United States and the Western Cherokees, subject to such modifications as may be made necessary by the 17th article of the treaty concluded at Washington city on the 19th day of July, 1866, between the United States and the Cherokee nation.

SEC. 2. The lands of the Cherokee nation shall remain common property until the national council shall request the survey and allotment of the same in accordance with the provisions of article 20 of the treaty of 19th of July, 1866, between the United States and the *the* Cherokee nation.

Amendments to article III.

SECTION 1. The upper house of the national council, known as the national committee, shall be hereafter known and styled the senate of the Cherokee nation, and shall consist of two senators for every district in the Cherokee nation.

SEC. 2. The council shall consist of two members from each
308 district, and when a district shall have to exceed two hundred voters it shall have an additional member, and for every additional two hundred voters in said district, upwards of four hundred, it shall have an additional member: *Provided*, That when any district shall have less than one hundred voters according to the census it shall be entitled to one representative.

SEC. 3. In order to ascertain and fix the representation to the council provided for by the preceding section, the national council shall cause to be taken, as soon as practicable, a census of the population of the Cherokee nation according to districts. A second census shall be taken in like manner in the year 1870 and each ten years thereafter, and the national council shall regularly apportion representation among the several districts as provided in the preceding section, agreeably to such census. The first apportionment provided for above shall be made before the first day of June, and shall govern the election to be held on the first Monday in August, 1867.

SEC. 4. The national council shall, after the present year, be held annually, to be convened on the first Monday in November, at such place as may be designated by the national council or, in case of emergency, by the principal chief.

SEC. 5. No person shall be eligible to a seat in the national council but a male citizen of the Cherokee nation who shall have attained the age of twenty-five years, and who shall have been a *bona fide* resident of the district in which he may be elected at least six months immediately preceding such election. All native-born Cherokees, all Indians and whites legally members of the nation by adoption, and all freedmen who have been liberated by voluntary act of their former owners or by law, as well as free colored persons who were in the country at the commencement of the rebellion and are now residents therein, or who may return within six months from the 19th day of July, 1866, and their descendants who reside within the limits of the Cherokee nation, shall be taken and deemed to be citizens of the Cherokee nation.

SEC. 6. The members of the national council shall each receive from the public treasury a compensation for their services, which shall be three dollars per day, during their attendance at the national council upon any regular session, not exceeding thirty days: *Provided*, that *that* the *per diem* allowance may be increased or diminished by law; but no alteration shall take effect during the period of service of the members of the national council by whom such alteration may have been made.

SEC. 7. All male citizens who have attained the age of eighteen

years shall be deemed qualified electors of the Cherokee nation, and there shall be no restrictions by law, save such as are required for persons convicted of crime, or for such limit as to residence, not exceeding six months in the district where the vote is offered, as may be required by census or registration.

Amendments to article V.

SECTION 1. The supreme court shall consist of three judges, who shall be elected by the national council, and whose duties, jurisdiction, and compensation shall be defined by law in the manner prescribed by the constitution. The national council at its
309 annual session in 1867 shall elect one of the supreme judges for three years, one for two years, and one for one year, and at each annual session of the national council thereafter shall elect one supreme judge, whose official term shall be three years.

SEC. 2. The judges of the circuit court shall hereafter be elected by the people, for the term of four years, and shall have the same jurisdiction, discharge the same duties, and be compensated in the same manner as is now provided for by the constitution. There shall be elected in like manner in and for each district as many judges as it may be deemed expedient for the public good, whose powers, duties, and duration in office shall be clearly designated by law.

Amendments to article VII.

SECTION 1. Neither slavery nor involuntary servitude shall ever hereafter exist in the Cherokee nation, otherwise than in the punishment of crime, whereof the party shall have been duly convicted; and any provision of the constitution of the Cherokee nation conflicting with the foregoing section is hereby annulled.

SEC. 2. The persons now holding office shall continue therein, except as may be otherwise expressly provided by law for Canadian district, until their successors be commissioned in November, 1867.

Tahlequah, Cherokee nation, November 26, 1866.

SMITH CHRISTIE,
President of National Committee.

Concurred:

WRITER,
Speaker of Council.

Approved:

WILL P. ROSS.

At a general convention of the people of the Cherokee nation, held at Tahlequah, Cherokee nation, on the 28th day of November, A. D. 1866, for the purpose of taking into consideration the foregoing amendments to the constitution of the Cherokee nation, and whereof Riley Keys, chief justice of the supreme court, was chosen president, and Budd Gritts, secretary, the said amendments to the constitution of the Cherokee nation were read, considered, and severally approved, and adopted by the Cherokee people.

In testimony whereof the president and secretary of said convention have subscribed the same at Tahlequah, Cherokee nation, on this the 28th day of November, A. D. 1866.

RILEY KEYS,
President of the Convention.
BUDD GRITTS, *Secretary.*

And whereas the foregoing amendments to the constitution were duly submitted to the said general convention of the Cherokee people, and were severally read, considered, and adopted on the 28th day of November, A. D. 1866: Now,

Therefore, be it known that I, William P. Ross, principal chief of the Cherokee nation, do issue this my proclamation declaring said amendments to be a part of the constitution of the Cherokee nation.

310 In testimony whereof I have hereunto subscribed my name this the 7th day of December, A. D. 1866.

WILL P. ROSS,
Principal Chief.

Deposition of Frank J. Boudinot, for Claimants, Taken at Washington, D. C., on the 19th Day of April, A. D. 1899.

Claimants' counsel, M. E. Harby; defendants' counsel, John J. Hemphill.

FRANK J. BOUDINOT, having been produced as a witness on behalf of the plaintiffs, was by me sworn before any question was put to him to tell the truth, the whole truth, and nothing but the truth relative to the said cause, and thereupon deposed and said his name is Frank J. Boudinot; that his occupation is that of a lawyer; that he is 32 years of age, and that his place of residence is Fort Gibson, Ind. T., and that he has no interest direct or indirect in the claim which is the subject of inquiry in said cause and that he is not related to the plaintiffs, and thereupon said Frank J. Boudinot was examined by the counsel for the plaintiffs, and in answer to interrogatories testified as follows:

1 question. Mr. Boudinot, you married the sister of the wife of Mr. R. C. Adams?

Answer. I did.

2 question. Beyond that marriage you have no other connection with any of the plaintiffs in this case?

Answer. Not that I know of.

3 question. Where were you born?

Answer. In the Cherokee nation, Ind. Ter.

4 question. Whereabouts?

Answer. In Canadian district, near Muscogee.

5 question. Your father is a Cherokee?

Answer. Yes, sir.

6 question. Where were you educated?

Answer. I went to school first at the Baptist Indian university, near Muscogee, Ind. T., was graduated there in 1886; afterwards went to Flint high school, at Flint, Mich. I had a diploma from there in 1887. In 1894 and 1895 I attended the law school at Ann Arbor, Mich., taking a special course.

7 question. Since then you have been a lawyer in the Indian Territory?

Answer. Yes, sir.

8 question. What political positions have you held in the Indian Territory?

Answer. In 1887 I was what we call down there an assistant executive secretary. I was a clerk in the executive office. In 1888 and 1889 I was a clerk of the Cherokee supreme court. In 1890 and 1891 I was the manager of the national newspaper, Cherokee Advocate, and 1892 and 1893 and part of 1891 I was engrossing clerk of the Cherokee senate. In 1894 and 1895 I was at school. In 1896 I was elected as one of the attorneys of the Cherokee nation before the Dawes commission in the matter of applications for citizenship; and the last two years I have been clerk of the joint
311 committee of the national council to settle with the Cherokee treasurer. I was clerk also in the interim between councils in 1897 for the Cherokee commission to treat with the Dawes commission. I have served as clerk of various committees of the Cherokee council through the last three or four years. Every council since I have been back from Ann Arbor I have served on some of the committees as clerk.

9 question. Do you know of the case of Moses Whitmire, trustee for the freedmen of the Cherokee nation, against the Cherokee Nation and the United States, No. 17209, in the Court of Claims of the United States?

Answer. Yes, sir; I know something about the case.

10 question. Were you a partner of E. C. Boudinot?

Answer. Yes, sir; before he died.

11 question. He was your brother?

Answer. He was my brother.

12 question. He is now dead?

Answer. He died in February, 1896—the 20th.

13 question. Do you know Jake Guthrie?

Answer. Yes.

14 question. State just what he is, as far as you know, and who he is.

Answer. He is a citizen of the Cherokee nation by adoption, having married a Shawnee. He lives some distance from Tahlequah. I have met him at Tahlequah.

15 question. Do you know of a certain roll the Cherokees call the Wallace roll?

Answer. I have heard of it. I know something about it.

16 question. State what you know about that roll.

Answer. The records will show that that roll was made by authority of the United States and the Cherokees had nothing to do with the making of it. It was for the purpose of disbursing the $75,000 appropriation as made by Congress to pay the freedmen, Delawares and Shawnees.

17 question. When was it made?

Answer. I don't remember exactly when it was made.

18 question. You think it was in 1890 or 1891?

Answer. Come to think of it, it was before 1890.

19 question. Where is this Wallace roll now?

Answer. It is on file here in the department, I suppose.

20 question. It is well known as the Wallace roll?

Answer. It is referred to as the Wallace roll.

21 question. State when was the first time that you heard of the compromise in this case of Whitmire against the Cherokee Nation.

Answer. Sometime about the beginning of the council in November, 1895. My brother, E. C. Boudinot, and I were going to dinner, past the National hotel in Tahlequah, and Jake Guthrie came to the fence and called my brother to him—held a conversation with him which I didn't hear. As we went up to the house he told me what Guthrie had said—that there was a scheme on foot, as they put it, to compromise the Whitmire case, and that if the compromise was effected there would be considerable money in it, and from then on we talked of the compromise as proposed, which was to set aside the Wallace roll on the part of Whitmire and place the Cherokee roll of 1880 in its stead, and the Cherokees to consent to an increase of the amount decreed by the Court of Claims from $900,000, about, to $1,300,000.

312 (Mr. Hemphill, on the part of the defense, before the above answer was given objected to it upon the ground that it undertook to detail a conversation with a party now deceased. Second, because it undertakes to repeat a conversation which is alleged to have taken place between E. C. Boudinot, now deceased, and Jake Guthrie. Third, because it is incompetent.

Mr. Hemphill further objects to testimony relating to the purposes of the Wallace roll, as the best evidence is the act of Congress or the other authority under which it was taken.)

22 question. Jake Guthrie was the attorney for the Shawnees who had suit against the Cherokees, was he not?

Answer. Yes, sir.

23 question. He was a friend of Robert H. Kern who is the attorney of record for Moses Whitmire, was he not?

Answer. I think so. I have seen them together.

24 question. Do you remember the occasion of your brother's visit to Kansas City?

Answer. In talking about this compromise he said he was looking for a telegram every day to go to Kansas City to meet Kern and other parties interested, whoever they were, to draw up an agreement to make a contract of some kind.

25 question. Did he receive a telegram?

Answer. He did.

26 question. Did you see it?

Answer. Yes, sir.

27 question. Is that telegram in existence?

Answer. I haven't seen it since my brother died; don't know whether it is or not.

28 question. Could you find it?

Answer. Could I find it now? I haven't been able to find it among his papers.

29 question. What were the contents of that telegram?

(Mr. Hemphill for the defense objects.)

Answer. "Can you be at the Midland to-morrow?"

30 question. How was that telegram signed?

Answer. It was signed by J. E. Campbell, I think.

31 question. When your brother returned from Kansas City what report did he make of what he had done in Kansas City?

Answer. He said that they had not made any contract in writing; that it was thought best not to have a written contract on account of the official positions of some of the parties connected, but that a verbal contract had been made under which there would be $50,000 to be divided into six shares in case the compromise was effected.

32 question. Did he tell you who were to get these shares?

Answer. Yes.

33 question. Who were they? State the full names.

Answer. Jake Guthrie, J. E. Campbell, C. J. Harris, S. H. Mayes, W. W. Hastings. Myself and my brother were to get the last share.

34 question. What was this $50,000 to be a payment for?

Answer. I did not know at that time, only that it was to be a payment for effecting the compromise and increasing the payment that was to be made to the freedmen.

35 question. Increasing it by how much?

Answer. By enough to increase the individual payments
313 from $256 to $295 each, but the sum of $400,000 was mentioned as being about the amount it would take to do that.

(Before the above reply of the witness detailing the conversation relating to the telegram and detailing the conversatoin with his brother, Mr. Hemphill for the defense objected to the testimony: First, because the proper proof of the telegram is either the original on file or a copy from the telegraph office. Second, as to the conversations, because it undertakes to detail a conversation with a party now deceased, and because the testimony is incompetent.)

36 question. When was it that your brother died?

Answer. February 20, 1896.

37 question. When was it that he returned from Kansas City and told you these facts?

Answer. In November, 1895, during session of council.

38 question. In accordance with this contract which your brother related to you, was anything done by the parties to it?

Answer. There was a proposition made by the attorney for Whitmire, Robert H. Kern, in writing.

39 question. Have you that proposition?

Answer. Yes; this is a copy of it.

COUNSEL FOR DEFENDANTS:

Question. Where is the original?

Answer. It is on file in the Cherokee executive department, I suppose. That is where it should be.

40 question. Have you seen the original letter?

Answer. Yes, sir.

41 question. And read it?

Answer. Yes, sir.

42 question. And is this a copy of it?

Answer. That is a copy.

COUNSEL FOR PLAINTIFFS: I offer it in evidence, marked for identification "Exhibit T."

(Mr. Hemphill objects to the admission of the copy. Claims that the original should be produced or certified, authenticated copy.)

43 question. Have you compared this with the official records?

Answer. I compared that with the official records here at Washington.

44 question. After that letter was received by the national council what action did the national council take?

Answer. They passed an act authorizing compromise of the suit.

45 question. Have you a copy of that act?

Answer. Yes, sir; this is a copy.

46 question. Have you seen that original act?

Answer. Yes; have read it many times.

47 question. Have you compared this copy with the official records here?

Answer. Yes, sir.

48 question. Is it a true copy?

Answer. Yes.

COUNSEL FOR PLAINTIFFS: I offer that as Plaintiffs' "Exhibit W."

(Mr. Hemphill on the part of the defense objects to the offer of a copy of the act, claiming that the original or certified copy of the records of the Cherokee council should be produced.)

314 49 question. What interest did Robert H. Kern have in this intended appropriation for $400,000?

Answer. You refer to this first act?

50 question. I refer to the appropriation for $400,000 that was to be made by the Cherokee council for the benefit of the Whitmire case.

Answer. When he got up to that point he was to have a third of it, but up to this time there was no appropriation to be made by the

national council. The money was here in the hands of the Secretary of the Interior, and when this law was passed it was to authorize the agent of the Cherokees to consent for the Court of Claims to increase its decree from $903,000 to the amount $1,300,000, and there was no further appropriation to be made by the national council.

51 question. After this act (Plaintiffs' Exhibit W) was passed, did the Court of Claims enter a decree in accordance with it?

Answer. No, sir; it did not.

52 question. After the Court of Claims refused to enter a decree in accordance with that act, what did the parties to the suit next do?

Answer. They made new agreements by which to effect the compromise at home.

53 question. Have you a copy of those agreements?

Answer. Yes, sir.

54 question. What interest, if any, did Robert H. Kern have in the $400,000 provided by these new agreements?

Answer. One-third.

55 question. Have you a copy of the contract setting forth that interest?

Answer. Yes, sir; this is a copy (producing paper).

56 question. Have you seen that original agreement?

Answer. Yes.

57 question. And read it?

Answer. Yes.

58 question. Have you compared this copy with the official records here?

Answer. I have.

59 question. And is it a true copy?

Answer. True copy.

(Plaintiffs' counsel offers the paper as Plaintiffs' Exhibit V.

Counsel for defense objects to this introduction of the copy and claims that they should produce the original or a certified copy of it from the office where the original is kept.)

60 question. What steps, if any, did Kern take to have that $400,000 appropriated?

Answer. At a called session of the national council of March, 1896, he came to Tahlequah and stayed there until the appropriation was made.

61 question. What did you do with regard to your interest in the secret contract?

Answer. Up to the time of my brother's death I hadn't spoken a word to anybody in the world about my interest in this business, or about the business at all, except to my brother. A day or two after he died I wrote to J. E. Campbell, being acquainted with him at the time better than the others, and told him of the interest I had in it and what I knew about it; that I expected him to keep faith, and

he answered and said that he would; that my brother's widow
315 would be protected. And he came down, or all of these parties came to the called session.

62 question. What parties?

Answer. Campbell, Guthrie, Kern, Harris, Hastings, and Mayes.

63 question. Where did you see Kern?

Answer. I saw Kern on the street a few times. I didn't meet him personally until I saw him at the hotel.

64 question. What occasioned you to see him at the hotel?

Answer. Well, when the council first met I went to Campbell at the National hotel and had a talk with him about this agreement, secret agreement, and told him that I expected the agreement to be carried out as it was made to my brother; that I was interested with him as partner in law.

65 question. What did he say?

Answer. Hs said that since the compromise had failed here that everything was off

66 question. What do you mean by "here"?

Answer. In Washington.

67 question. And then what did he say?

Answer. They were starting out on a new basis, and he repeated what he said in the letter, that my brother's widow would be protected and that he would see all the other parties, and if he needed me he would let me know.

68 question. When did you next hear from these people?

Answer. A few days before this bill passed. Late in the evening a messenger came for me and told me I was wanted at the National hotel. I went down and found Kern—Robert H. Kern, Jake Guthrie, and J. E. Campbell. They were in Kern's room at the National hotel.

69 question. What was the conversation about there?

Answer. Campbell had a draft of a bill. He said he had called me down as he said he would if he needed me, and the time had come when he needed me, and he showed me a draft of a bill, an act which he said they wanted the committee to report to the national council in the exact words it contained.

70 question. What did he say about your compensation?

Answer. Well, after I had agreed to guarantee to get the bill reported he asked me what it was worth and I told him if they would carry out the original agreement I would be satisfied.

71 question. What political position did you have at this time?

Answer. None, I think.

72 question. What did you do with the draft of the bill that they gave you?

Answer. When they first gave it to me I said I would have to take it for two hours and see what it was. I noted several changes in it and took it back and told them if they would consent to the changes I would guarantee to have it reported. Campell said he didn't know about that, and he called Kern, and after some objections Kern finally consented. He said he had spent a great

deal of time preparing the bill and he wanted it to go in just as it was. The next morning I took the bill down to my office and met the members of the committee.

73 question. What committee?

Answer. The committee who had this matter in charge from the national council.

74 question. While you were there who came to the office?

316 Answer. Campbell, Hastings, and Kern. Campbell and Kern went to my office with me from the National hotel.

75 question. Was your father present?

Answer. He was there.

76 question. What political position did your father have?

Answer. He was clerk of that committee.

77 question. He was clerk of the committee having in charge the preparation of this bill?

Answer. Yes.

78 question. After you and Kern got there what did Hastings say after he came in?

Answer. Hastings came in and told Kern to go back to the hotel and stay there.

79 question. Did he say why?

Answer. He said his presence there might arouse suspicion.

80 question. After this meeting in your office what did you do to get this bill passed?

Answer. During the council, you mean?

81 question. Generally what did you do in order to push the bill through?

Answer. I didn't do anything after the meeting in the office. All that I promised to do, and did do, was to get that bill before the committee and they to agree to report it as it was.

82 question. You turned it over to your father and the rest of the committee?

Answer. Yes, sir; and Hastings. I am sure that they had engaged Hastings to assist them in the preparation.

83 question. Was the bill passed?

Answer. Yes, sir.

84 question. Have you read over the original bill?

Answer. Yes.

85 question. Are you familiar with it?

Answer. Yes; very.

86 question. Have you a copy of it?

Answer. Yes (producing paper).

87 question. Have you compared it with the records here?

Answer. Yes.

(Plaintiffs' counsel offers the copy as Exhibit W.

Mr. Hemphill objects to the copy, and claims that the original or a certified copy from the keeper of the original should be produced, and he further objects that all of the testimony of this witness is irrelevant and incompetent.)

88 question. This bill is dated as having passed the senate March 24, 1896. Prior to this the decree of the Court of Claims in the Whitmire case was filed, was it not?

Answer. On February 3, 1896.

(Offered in evidence as Plaintiffs' Exhibit X.)

89 question. After this bill was passed did Mr. Kern receive anything by reason of that act (Plaintiffs' Exhibit W) and his contract with Whitmire (Plaintiffs' Exhibit V)?

Answer. Yes; he received $126,666.

90 question. Did he give a receipt for it?

Answer. Yes.

91 question. Have you seen that receipt?

317 Answer. Yes.

92 question. Have you a copy of it?

Answer. Yes (producing paper).

93 question. Have you compared it with the official records here?

Answer. Yes.

94 question. Is it a true copy?

Answer. True copy.

(Offered in evidence as Plaintiffs' Exhibit Y.
Defendants' counsel objects to that as being a copy.)

95 question. Did D. W. Lipe, treasurer of the Cherokee nation, ever account for the money received by him to be disbursed in accordance with this act?

Answer. Yes; he made a report to the national council and a statement.

96 question. Have you seen that statement?

Answer. Yes.

97 question. Have you a copy of it?

Answer. Yes (producing paper).

98 question. Have you compared it with the official records here?

Answer. Yes.

99 question. Is this a true and genuine copy.

Answer. True copy.

PLAINTIFFS' COUNSEL: I offer it in evidence as Plaintiffs' Exhibit Z.

(Mr. Hemphill makes the same objection to this copy as made to the other copies of papers heretofore.)

100 question. Do you know R. M. Wolff, a member of the Cherokee senate?

Answer. Yes, sir.

101 question. Did you have a certain conversation with him with regard to the passing of this bill?

Answer. I did; had several.

102 question. State the place, the time, and the substance of these conversations.

Answer. That was after the passage of the bill in April, 1896, and

after that in our office—he was a partner of mine. We entered into a partnership to practice law.

103 question. In what town?

Answer. In Tahlequah.

104 question. State your conversations.

Answer. Among other things—I don't know the whole conversation, but in speaking about this compromise he said that he had gotten $2,000 or $2,500 out of it; that they wanted him to take a contingent fee, and he wouldn't do it. He made them pay him in advance. I saw him with fifteen $100 bills at one time, and he said that was what it was; that was part of it.

105 question. What was the public report with regard to the passing of this bill?

Answer. That it had been bought through.

(Defendant objects to that as incompetent.)

106 question. Was any resolution passed by the Cherokee council on the subject of that report?

Answer. Yes, sir; council in the fall of 1897.

107 question. Have you read that resolution?

318 Answer. Yes, sir.

108 question. Have you a copy of it?

Answer. Yes, sir.

109 question. Have you compared that copy with the official records here?

Answer. I have.

(Plaintiffs' counsel offers the resolution in evidence as Plaintiffs' Exhibit AA.

Mr. Hemphill makes same objection as to the other copies of papers.)

110 question. After this last bill (Plaintiffs' Exhibit W) was passed, what was done with regard to appointing commissioners for the purpose of enrolling citizens?

Answer. There were three commissioners appointed.

111 question. What was their duty?

Answer. Their duty was to make a corrected roll of freedmen citizens of the Cherokee nation.

112 question. What was that roll called?

Answer. It is known as the Clifton roll.

113 question. Where is it?

Answer. It is on file here in the Interior Department and in the treasurer's office, Cherokee nation.

114 question. Have you seen that roll?

Answer. Yes, sir.

115 question. And read it?

Answer. Yes, sir.

116 question. How many duplicates appear on the face of that roll, if any?

Answer. One hundred and fifteen, that I know of.

117 question. How many appear on it that are not citizens?

Answer. It is estimated that there are a thousand. There are 4,552 names on the roll.

118 question. It appears from these exhibits that are filed here today that this compromise was for the purpose of evading the Wallace roll, the idea being that the Wallace roll contained more names than there were citizens. Now state, if you know, how many names there actually are upon that Wallace roll.

Answer. On the Wallace roll there are less than 3,500.

119 question. How many more names appear on the Clifton roll than were on the Wallace roll?

Answer. More than 1,100.

The said witness was then cross-examined by the counsel for defendants, and, in answer to interrogatories, testified as follows:

1 cross-question. Give the names of the parties in this agreement. State whether they are living or dead, and if living, what their present address is.

Answer. Jake Guthrie, Coffeeville, Kans., living; J. E. Campbell, Alluwe, Ind. T., living; C. J. Harris, Tahlequah, Ind. T., living; W. W. Hastings, living at Tahlequah, Ind. T.; S. H. Mayes, chief at Tahlequah, Ind. T.—his home is Pryor Creek, Ind. T. Our firm was the sixth. My post-office address is Fort Gibson, Ind. T.

2 cross-question. State whether any of these other parties received any money out of this fund of $400,000.

Answer. I didn't see them get any. I couldn't say.
319 Hastings and Campbell were the only two of these parties that told me they got any. I didn't ask the others.

3 cross-question. Did they say how much they had gotten?

Answer. No, sir.

4 cross-question. Did you get any out of it?

Answer. In August, 1896, Hastings paid me $1,600.

5 cross-question. Any other?

Answer. That's all I got.

6 cross-question. Did your brother's widow get any?

Answer. Hastings told me at that time that he had $2,400 for her, and I understand she got it; she told me she did.

7 cross-question. Do you know about any of the others?

Answer. No, sir; I don't.

8 cross-question. What was the result of this investigation under the resolution of the council?

Answer. They didn't get through investigating. Council expired by limitation. They asked the chief by resolution to continue the session so they might complete their work. He refused to do it.

9 cross-question. Did the Court of Claims enter a judgment for $900,000?

Answer. $903,000 and some odd dollars.

10 cross-question. In what case?

Answer. In the case of Moses Whitmire *v.* The Cherokee Nation and The United States—the Freedmen case.

11 cross-question. That was in behalf of the freedmen claiming to be citizens, was it?

Answer. Yes, sir.

12 cross-question. Who was Wolff?

Answer. R. M. Wolff. He is a Cherokee. He was clerk of the senate.

13 cross-question. Where does he live?

Answer. His post-office address is Tahlequah, Ind. T.

14 cross-question. How do you know there are 115 duplicates on the Clifton roll?

Answer. I have been the clerk of the joint committee to settle with the treasurer for the last two years and I have made an exhaustive examination of it under the direction of the committee.

15 cross-question. Did you examine the parties themselves, or simply go over the roll and see that there was an identity of names?

Answer. They were found, some of them, by the treasurer in making payments; others I have examined since then personally. How I happened to do that, the treasurer told me if I would get lawful power of attorney he would pay claims to me—if I had power of attorney from an unpaid beneficiary. I corresponded with forty or fifty different ones, sometimes two or three in a family, and they all told me they had been paid.

16 cross-question. Did you hold out 115 of them yourself?

Answer. I took that number off the roll; yes, sir—115 duplicates.

17 cross-question. Did you ascertain that by personal investigation?

Answer. By personal investigation of the roll and of the records.

18 cross-question. How many parties did you see personally?

Answer. I didn't see to talk with more than a dozen, I don't suppose. I had the post-office addresses of the others and I wrote to them. This entire 115 I found in the treasurer's office. The
320 roll showed duplicate names and the treasurer's record showed that they were the same persons.

19 cross-question. Do you know that it showed that they were the same persons?

Answer. The treasurer had made the investigation as he was making the payments.

20 cross-question. Do you mean he told you that?

Answer. He had it down on his books, yes; and the roll showed names of freedmen of certain age, of certain residence, and members of certain families had been enrolled again at another place and another number. I found several names on that roll of apparently fictitious persons, and after asking everybody who knew anything about it, I could not find anyone living in the Cherokee nation who knew them or ever had known them. The family I have particularly in mind is that of William Grimmet, who had five children apparently enrolled in Tahlequah district.

By the COMMISSIONER:

Question. Do you know of any other matter relative to the claim in question?

Answer. No, sir.

FRANK J. BOUDINOT.

I, E. S. Rockwell, a commissioner of the Court of Claims, in and for the District of Columbia, certify that at the time and place aforesaid, Frank J. Boudinot, witness on behalf of the plaintiffs in the above-entitled cause, was by me sworn, before any question was put to him, to tell the truth, the whole truth, and nothing but the truth relative to the said cause; and that the answers were taken down in my presence and his deposition as above set forth was read over to and signed by him before me at the time and place aforesaid.

In witness whereof I have hereunto set my hand and official seal this 19th day of April, 1899.

[SEAL.] ERASTUS S. ROCKWELL,
Commissioner Court of Claims.

EXHIBIT W, 4/19/99.

An act to appropriate and pay certain moneys out of moneys arising from the sale of the Cherokee Outlet to the freedmen of the Cherokee nation.

Whereas by virtue of an agreement made and entered into between the Cherokee nation and the Secretary of the Interior of the United States on or about the 17th day of May, 1893, the sum of $1,660,000, with accrued interest, was allowed to remain in the Treasury of the United States, the same being a portion of the money due the Cherokee nation from the United States on account of the purchase of the Cherokee Outlet, to answer any claim that might be established in the Court of Claims, of the United States in favor of the Delawares, Shawnees, and freedmen in suits then pending in said court in their behalf against the Cherokee nation, which sum on March 4, 1895, amounted to $1,792,800; and

Whereas the said Court of Claims in the said suit decided
321 that each of said parties was entitled to recover of the Cherokee nation, $256.64, and in the case of Moses Whitmire, trustee for said freedmen, against the Cherokee Nation *et al.*, did decree on May 8, 1895, that he was entitled to recover of the Cherokee nation the sum of $903,365, and that what is known as the Wallace roll was binding on the Cherokee nation; and

Whereas the Cherokee nation in the distribution of the several sums complained of in said suits, had paid each Cherokee the sum of $295.35 each; and

Whereas the Cherokee national council did, on December 7, 1895, enact a law agreeing that the nation, in consideration of said Moses

Whitmire, as trustee of said freedmen, agreeing that in said cause the decree entered of date May 8, 1895, should be so modified as to strike therefrom the provision making the Wallace roll binding on the Cherokee nation and agreeing that a number of freedmen entitled to share in the last-named sum would consent to increase the judgment so entered from the sum of $903,365 to the sum of $1,300,000, and did appoint E. C. Boudinot to carry out the provisions of said act; and

Whereas said E. C. Boudinot and R. H. Kern, attorney for Whitmire, did petition said court to modify said decree; and

Whereas said court refused to so modify said decree and held the Wallace roll binding on the nation, and declared that increase of $400,000 to equalize the freedmen with the Cherokee in the payments made to the Cherokees was properly the duty of the Cherokee national council; and

Whereas all parties to this litigation were desirous that it should end; and

Whereas the Cherokee nation was willing that each freedman should be paid same sum as each Cherokee had been paid, to wit, the sum of $295.35, and that the spirit of the said act of the national council should be carried into effect, it was agreed between Samuel H. Mayes, principal chief, C. J. Harris, G. W. Benge, Roach Young, and Joseph Smallwood, the Cherokee delegation, and E. C. Boudinot, all acting for the Cherokee nation, and Moses Whitmire, trustee, and R. H. Kern, his attorney, acting for the freedmen, that if the said principal chief would call a special session of the Cherokee national council, and recommend that it appropriate the sum of $400,000 to equalize said freedmen with the Cherokees, that said Whitmire and Kern would recommend to the Court of Claims that the decree be so modified as to strike from it the binding force of the Wallace roll on the nation and allow that the number of freedmen entitled to share under said decree should be ascertained by a commission of three persons.

The agreement between E. C. Boudinot and R. H. Kern above stated reads as follows:

"This agreement, made and entered into this 28th day of January, A. D. 1896, by and between E. C. Boudinot, acting as the duly authorized attorney of the Cherokee nation, for the purpose of settling the suit of Moses Whitmire, trustee for the freedmen of the Cherokee nation, *v.* The Cherokee Nation and The United States, in the Court of Claims, at Washington, D. C., and Robert H. Kern, acting as attorney for said Whitmire, witnesseth:

"That the said Robert H. Kern hereby agrees with said Boudinot to obtain the consent of said trustee and said Court of Claims that
322 the provision in the decree therein making the Wallace roll binding on the Cherokee nation shall be stricken therefrom, and in lieu thereof a provision inserted providing that the identity of the number of freedmen mentioned in said decree shall be ascertained by a commission approved by said court, and that

the said Boudinot agrees with said Kern, in consideration of having this done, to have the principal chief of the Cherokee nation call together the national council thereof in special session, and within a reasonable time, and to have said national council so convened appropriate such sums of money as may be needed in excess of the amount decreed to be due the freedmen in the above cause as may be necessary to equalize the said freedmen in the amount the Cherokees have paid themselves each in the three payments complained of in the said suit, but not in excess of $400,000; it being understood that if the said calling of the council and appropriation by it of said sum shall fail, then the provision striking from said decree the Wallace roll shall be set aside, and the decree shall remain in force as it now is.

"In testimony hereof we have hereunto set our hands, day and date first hereinbefore written.

"R. H. KERN,
"*Attorney for Freedmen.*
"E. C. BOUDINOT,
"*Attorney for Cherokee Nation.*"

And the agreement between said Mayes and the Cherokee delegation and R. H. Kern, reading as follows:

"This agreement, made and entered into this 28th day of January, A. D. 1896, by and between Samuel Mayes, principal chief of the Cherokee nation, acting in and for its behalf, and Robert H. Kern, attorney for Moses Whitmire, trustee of the freedmen of the Cherokee nation, acting for and in his and their behalf, witnesseth:

"That whereas the Court of Claims of the United States has refused to approve and enforce the compromise of the suit pending therein, wherein Moses Whitmire, trustee of the freedmen of the Cherokee nation, is plaintiff and The Cherokee Nation and The United States are defendants. Now, for the purpose of ending said litigation and securing the object of said proposed compromise as provided for in an act of the national council approved December 7, 1895, the parties to this agreement stipulate as follows: That said Samuel Mayes, as said principal chief, agrees that within a reasonable time to call together the national council of the Cherokee nation in an extra session, and to recommend it to appropriate such sums of money as shall be needed to equalize the freedmen with the Cherokees in the payment of the three funds that are mentioned in the pleadings and the decree in the case above mentioned; that is to say, such sum in excess of the judgment for $903,254 now standing in said decree in favor of complainants therein, viz, an additional sum of $400,000, as provided in an act of December 7, 1895, with the reservation that all surplus is to be returned to the Cherokee nation. And the said Robert H. Kern agrees to obtain the consent of said Whitmire and the Court of Claims to the striking from said decree of the provision therein making the Wallace roll binding upon the Cherokee nation, and to substitute in lieu thereof a provision that

the number of the freedmen mentioned in said decree shall be determined by a commission approved by said court.

323 "In witness whereof the parties hereunto set their hands the day and date first hereinbefore written.

"S. H. MAYES.
"ROBERT H. KERN.
"MOSES (his x mark) WHITMIRE.

"Witness to Moses Whitmire's signature:
"J. K. MILTON TURNER.
"MARIA L. RICHARDSON.

"We the undersigned duly accredited delegates from the Cherokee nation hereby approve of the above agreement.

"C. J. HARRIS.
"ROACH YOUNG.
"JOSEPH SMALLWOOD.
"G. W. BENGE.

"I, the undersigned, Moses Whitmire, acting as trustee as above stated, approve of the above agreement.

"MOSES (his x mark) WHITMIRE, *Trustee.*

"Witnesses:
"J. MILTON TURNER.
"MARIA L. RICHARDSON."

That in pursuance of said agreement and to carry the same into effect, the said Court of Claims did at the request of said Boudinot and Kern, on February 3, 1896, so modify said decree as to strike therefrom all provision making the Wallace roll binding on the Cherokee nation, and did decree that the number of freedmen entitled to share in said sum of $903,365 should be ascertained by a commission of three persons, one to be appointed by the principal chief of the Cherokee nation, one by said Whitmire, and one by the Secretary of the Interior, and that the Secretary of the Interior should pay said money to said freedmen as they appeared on the roll made by these commissioners and approved by the Secretary of the Interior; but that (to) no one of said freedmen should a sum in excess of $256.34 be paid; and

Whereas there still remains in the Treasury of the United States in excess of the judgment rendered in the Delaware, Shawnee, and freedmen cases, of said sum first mentioned, the sum of $491,155.06.

Now, therefore, for the purpose of carrying out the aforesaid agreement between the said Mayes, Cherokee delegation, and the said Boudinot and the said Whitmire and Kern, and for the purpose of equalizing the freedmen with the Cherokees in the payments to each of them of the same amount as has been paid each Cherokee:

Be it enacted by the national council, That there be, and is hereby, appropriated out of the above fund, to be paid said freedmen, the sum of $400,000, or so much thereof as shall be necessary to carry

this act into effect, which is hereby directed to be paid said freedmen by the treasurer of the Cherokee nation as their names shall appear upon the roll approved by the Secretary of the Interior, as provided in said decree of February 3, 1896, after payment of said money mentioned in said decree shall have been made to them by the Secretary of the Interior; but in no event shall said
324 treasurer of the Cherokee nation pay out of said $400,000 more than in addition to the sum of $903,365, the amount of the judgment in the case of Moses Whitmire, trustee of the freedmen of the Cherokee nation *v.* Cherokee Nation *et al.*, in Court of Claims than will pay each freedman the sum of $295.35. From said sum of $400,000 there shall be deducted the amount said Whitmire, as trustee, contracted to pay his attorney of record in said cause, which shall be paid said attorney by said treasurer out of said fund as soon as the same is available and charged against moneys to be paid to the freedmen. The expense of making said payment by said treasurer shall also be deducted from said fund of $400,000 and likewise charged against said freedmen.

SEC. 2. That the treasurer of the Cherokee nation is hereby authorized, empowered, and directed to request the Secretary of the Interior and the Secretary of the Treasury of the United States to transfer the remainder of the first installment, with accrued interest, of the proceeds of the "Cherokee outlet," set aside by the act of Congress of March 3, 1893, to satisfy the claims of the Delawares, Shawnees, and freedmen after deducting the amount of the judgments obtained in their behalf, to the assistant treasurer of the United States at St. Louis, Mo., to the credit of the Cherokee nation.

Passed the senate March 24th, 1896.

SAMUEL SMITH,
President of Senate.
RICHARD M. WOLFE,
Clerk of Senate.

Concurred in by the council branch of the national council March 26, 1896.

JOHNSON SIMMONS,
Speaker of the Council.
R. W. KING,
Assistant Clerk of Council.

Approved March 27, 1896.

S. H. MAYES,
Principal Chief.

EXHIBIT X, APRIL 19, 1899.

[Court of Claims. No. 17209. (February 3, 1896.) Moses Whitmire, trustee for the freedmen of the Cherokee nation, *v.* The Cherokee Nation and the United States.]

It appearing that since the entry of the decree filed May 8, 1895, the defendant, The Cherokee Nation, has filed motions for a rehearing and new trial, and an application for an appeal from said decree to the Supreme Court, which motions have not been heard and which application for an appeal has not yet been allowed; and it appearing that both parties are desirous of avoiding further litigation and have agreed that if the court shall see fit to modify said decree it will be accepted as final—

Now, on motion by the attorney for the complainant, the defendant consenting thereto, it is ordered that the said decree be vacated and set aside, and that the following decree be entered as the final decree in this case:

325 Court of Claims.

MOSES WHITMIRE, Trustee for the Freedmen of the Cherokee Nation,
v.
THE CHEROKEE NATION and THE UNITED STATES. } No. 17209.

At a sitting of the Court of Claims in the city of Washington, this 3d day of February, 1896,

This cause coming on to be heard upon the amended petition, answer, agreed facts, and arguments submitted by the parties, respectively, and the court having heard the same and considered the just rights in law and equity of the freedmen of the Cherokee nation, including all persons who had been liberated by voluntary act of their owners or by law, and all free colored persons who resided in the Cherokee country at the commencement of the rebellion and resided therein July 19, 1866, or returned thereto within six months thereafter, and their descendants who are settled and incorporated into the Cherokee nation, in pursuance of the authority vested in the court by act of Congress entitled "An act to refer to the Court of Claims certain claims of the Shawnee and Delaware Indians and the freedmen of the Cherokee nation, and for other purposes," approved October 1, 1890.

And it appearing to the court that under the provisions of article 9 of the treaty of July 19, 1866, made by and between the Cherokee nation and the United States, the said freedmen, who had been liberated by voluntary act of their former owners or by law, and all free colored persons who resided in the Cherokee country at the

commencement of the rebellion and were residents therein at the date of said treaty, or who had returned thereto within six months of said last-mentioned date, and their descendants, were admitted into and became a part of the Cherokee nation and entitled to equal rights and immunities, and to participate in the Cherokee national funds and common property in the same manner and to the same extent as Cherokee citizens of Cherokee blood.

It further appearing to the court that under and by virtue of an act entitled "An act making appropriations for current and contingent expenses, and for fulfilling treaty stipulations with Indian tribes for the fiscal year ending June 30, 1894," approved March 3, 1893, it was provided for the payment to the Cherokee nation of the sum of $8,595,736, the same to be in full consideration of all the right, title, interest, and claim which said nation might have in the lands lying west of 96° west longitude, commonly known as the Cherokee Outlet; and it further appearing that of the said sum $8,595,736 the sum of $295,756 was appropriated by said act out of the Treasury of the United States and made immediately available, and that the balance thereof, to wit, $8,300,000, was made payable in five annual installments, the first to be payable on the 4th day of March, 1895, and all deferred payments to bear interest at the rate of 4 per centum per annum, and that a sufficient amount of the money provided in said act should be paid for the purchase of said Cherokee Outlet to pay the Delawares and Shawnees their *pro rata* share of said Outlet, should remain in the Treasury of the United States until the status of said Delaware and Shawnee Indians should be determined by the courts of the United States before which
326 their suits were then pending; also a sufficient amount to pay the freedmen, who are Cherokee citizens, as the same shall be determined by the courts; and the said act further providing that if the legislative council of the Cherokee nation should deem it more advantageous to their people they might issue a loan for the principal and interest of the deferred payments, pledging said amounts of interest and principal to secure payment of such debt; and it appearing to the court that said Cherokee nation has borrowed from the Union Trust Company of New York the sum of $6,640,000, and pledged as security therefor the four payments as aforesaid, falling due after the 4th day of March, 1895, and that the payment falling due on the said 4th day of March, 1895, amounting to $1,660,000, has been retained in the Treasury of the United States from which to pay the Delawares, Shawnees, and freedmen, as hereinbefore set forth; and it further appearing to the court that the said $6,640,000, so borrowed by the Cherokee nation, has been distributed to the Cherokee citizens of Cherokee blood, to the exclusion of the complainants, the aforesaid freedmen and free colored persons and their descendants, as well as the two funds of $300,000, each distributed by the act of the Cherokee council, of date of April 26, 1886, and November 25, 1890, as charged in the amended petition in this case—

It is ordered, adjudged, and decreed that so much of the acts of

the Cherokee national council of date April 26, 1886, November 25 1890, and May 3, 1894, as restricts the distribution of funds which were derived from the public domain and from the sale of lands by the Cherokee nation to the Government of the United States to citizens of the nation by blood be held and decreed void and contrary to and in derogation of the constitution of the Cherokee nation and the provisions and stipulations of article 9 of the aforesaid treaty of July 19, 1866, with respect to the rights of said freedmen who had been liberated by voluntary act of their former owners or by law, and all free colored persons who resided in the Cherokee country at the commencement of the rebellion and who on the said date resided therein, or who returned thereto within six months thereafter, and their descendants; and that the said Cherokee nation or its trustees, the United States, account for, render, and pay to the aforesaid freedmen and free colored persons and their descendants, out of any funds of the said nation in its national treasury, or in the custody of the United States as trustee, or held by agreement between said nation and the United States for the purpose of satisfying the decree herein rendered, not specifically appropriated by law to other purposes, or out of funds which may hereafter come to the possession of said trustee belonging to the Cherokee nation, a sum equal to the aggregate amount which said freedmen and free colored persons and their descendants would have received if the before-mentioned void and unconstitutional restrictions in said statutes had not existed.

And it is further adjudged and decreed that the complainants in this suit and those whom they represent, being the freedmen and free colored persons aforesaid and their descendants living and in being on the 3d day of May, 1894, are entitled to participate hereafter in the common property of the Cherokee nation in the same manner and to the same extent as Cherokee citizens of Cherokee blood or parentage may be entitled, and that in the distribution of the proceeds and avails of the public domain or common property of the nation among the citizens thereof by distribution *per capita* at any time hereafter, the defendant, The Cherokee Nation,
327 and the defendant, The United States, as trustee of the Cherokee nation, be enjoined and prohibited from making any discrimination between the Cherokee citizens of Cherokee blood or parentage and Cherokee citizens who are or were freedmen who had been liberated by voluntary act of their former owners or by law, as well as all free colored persons who were in the Cherokee country at the commencement of the rebellion and were residents therein at the date of said treaty, or who returned thereto within six months thereafter, and their descendants, to the prejudice of the latter.

It being understood that the freedmen and their descendants and free colored persons above referred to shall include only such persons of said class as have not forfeited or abjured their citizenship of said Cherokee nation at the date of the entering of this decree.

And it is further adjudged and decreed, with respect to the participation of said freedmen and free colored persons aforesaid and

their descendants in the three funds referred to in the three statutes of the Cherokee nation hereinbefore declared to be void and unconstitutional, that the Cherokees by blood having received a sum which amounts at the date hereof to $7,240,000, in which the said freedmen and free colored persons aforesaid and their descendants were entitled to have and participate in the distribution of said sum; and for the purpose of fixing an amount thereof which ought to be distributed among said freedmen and free colored persons and their descendants, it is further adjudged and decreed that said freedmen and free colored persons and their descendants are entitled to have and receive the sum of $903,365 out of the sum last aforesaid, after deducting the amounts hereinafter allowed and decreed to be paid to the trustee herein as his compensation for services as trustee and the attorney of record of the complainant herein, and the other expenses incident to the ascertainment and payment of the complainants, the freedmen, as hereinafter provided, such balance remaining to be paid by the Secretary of the Interior to the freedmen and free colored persons aforesaid and their descendants, *per capita*, who would have been entitled to receive the same if the unconstitutional restrictions and discriminations in said statutes had not existed. Such payments to be made upon a roll of said freedmen and free colored persons and their descendants as prepared and approved by the Secretary of the Interior, in accordance with provisions hereinafter set forth in this decree.

And it is further ordered and adjudged that, for the purpose of ascertaining and determining who are the individual freedmen of the Cherokee nation now entitled to share in the distribution of the said sum of $903,365, the Secretary of the Interior be authorized to appoint three commissioners, one on the nomination of the complainant and one on the nomination of the defendant, The Cherokee Nation, but both nominations to be approved by him, to proceed to the Cherokee country and hear the testimony both for and against the identity of all freedmen, free colored persons, and their descendants, claiming to be entitled to share in the distribution of said $903,365, that may be offered by the respective parties to this suit; and that each of said parties shall be entitled to be represented before said commissioners, either at the taking of testimony in the Cherokee country or elsewhere; and that the said commissioners, in ascertaining the identity of the freedmen entitled to share under this decree, shall accept what is known as the authenticated Cherokee roll, the same now being on file in the office of the Secretary of the Interior, having been furnished to him and purport-
328 ing to have been taken by the Cherokee nation in 1880 for the purpose of showing the number of freedmen then entitled to citizenship in the said nation under the terms of the treaty between the United States and the Cherokee nation hereinbefore referred to, and their descendants; and the said commissioners shall ascertain who of said persons named on said roll were alive and what descendants of said persons were alive on May 3, 1894, and no evidence shall be accepted by said commission tending to disprove

the citizenship of any of the persons whose names appear upon said roll.

And it is further ordered and directed that when the foregoing roll so reported by the said commissioners shall be approved by the Secretary of the Interior, he will cause the amount remaining of the fund of $903,365, after deducting the cost and expenses herein directed to be paid by the complainants, to be paid and distributed to the persons entitled thereto, such payments, however, not to exceed $256.34 *per capita*, and the cost of distribution and payment likwise being a charge upon the fund of the complainants so to be distributed, pursuant to the act of March 2, 1895, section 11.

And it is further directed that the amount of $6,500, or so much thereof as may be necessary, is hereby allowed for the compensation of the said commissioners and the necessary costs and expenses incidental to the ascertainment of the individual complainants by them as hereinbefore provided; and it is hereby adjudged that one-half of such compensation and expenses shall be paid by the complainants and deducted from the recovery in this suit, and that the remaining one-half part of such compensation and expenses shall be paid by the defendant, The Cherokee Nation, in addition to the costs hereinafter adjudged against the said defendant. And the Secretary of the Interior is authorized to fix the compensation of said commissioners and to advance for the necessary and immediate expenses of making the rolls as hereinbefore provided such amount as he may deem advisable.

There is further adjudged and decreed to Robert H. Kern, the attorney of record for complainant, for compensation and counsel fees, including the compensation of all associate counsel and the expenses and disbursements incident to the litigation, 2 per cent. of the amount of the recovery, to wit, $18,067.30, which amount it is adjudged shall be paid by the Secretary of the Treasury of the United States to the said Robert H. Kern, out of the funds hereinbefore mentioned, now in his hands, and that the same when so paid shall be charged to the defendant, The Cherokee Nation.

And there is further decreed and adjudged to the said Robert H. Kern, attorney of record of the complainants, for compensation and counsel fees, including the compensation of all associate counsel and the expenses and disbursements to the litigation, 4 per cent. upon the amount of the recovery, to wit, $36,134, which amount it is adjudged shall be paid by the Secretary of the Treasury of the United States out of the funds hereinbefore mentioned, now in his hands, and shall be a charge against the freedmen of the Cherokee nation, and paid out of the funds hereinbefore awarded to them.

It is further adjudged and decreed that Moses Whitmire, as trustee of the complainants, be allowed for compensation for his services as such, including expenses and disbursements made by him, the sum of $5,000, which amount it is adjudged shall be paid to said trustee by the Secretary of the Treasury of the United States
329 out of the funds hereinbefore mentioned, now in his hands, and shall be a charge against the freedmen of the Cherokee nation, and paid out of the funds hereinbefore awarded to them.

And the complainant having represented that the number of the freedmen entitled to distribution is not less than 3,524, it is further ordered that if said number of persons entitled to distribution shall not equal that number the payments made shall not exceed $256.34 *per capita*, and that the balance of the amount hereby decreed to said plaintiffs and not consumed in the *per capita* payments herein provided for, shall be paid over to the Cherokee nation as other moneys provided for in the agreement between said nation and the Secretary of the Interior, hereinbefore referred to.

It is further adjudged that the Secretary of the Interior pay the aforesaid amount decreed to be paid by him out of the aforesaid funds now in the Treasury Department of the United States.

And it is further ordered, adjudged, and decreed that the defendant, The Cherokee Nation, pay the costs of this suit, as above provided, and that if this judgment and decree be not carried out and satisfied within six months from the date hereof the claimant may apply to this court for such further order, relief, or remedy as the plaintiff herein may deem necessary, and that if any further proceeding be had under this decree the rights of the attorneys and counsel for the plaintiff herein to further costs and allowances be reserved to be hereafter determined and fixed by the court, and the court reserves the right to make all such further orders in aid hereof as to it may seem meet.

It is hereby stipulated and agreed on the part of the complainant and on the part of the defendant, The Cherokee Nation, that the foregoing decree be entered in this case in the place and stead of the decree entered and filed May 8, 1895, in this case; and that it be entered *nunc pro tunc* as of that date, to wit, May 8, 1895; and that the application for an appeal filed by the complainant and the application for an appeal and motions for a rehearing and for a new trial filed by the said defendant be mutually withdrawn upon the entry of this corrected decree.

Dated Washington, February 3d, 1896.

ROBERT H. KERN,
Attorney for the Complainant.
E. C. BOUDINOT,
MAXWELL & CHASE,
Attorneys for the Cherokee Nation.
S. H. MAYES,
Principal Chief of the Cherokee Nation.

The defendants, The United States, offer no objection to the entry of the amended decree as provided in this stipulation.

——— ———,
Assistant Attorney-General.

EXHIBIT Y, APRIL 19, 1899.

TREASURY DEPARTMENT, CHEROKEE NATION,
TAHLEQUAH, IND. T., *August* 15, 1896.

Received of D. W. Lipe, treasurer of the Cherokee nation, as provided by an act of the national council approved March
330 27, 1896, and entitled "An act to appropriate and pay certain moneys arising from the sale of the Cherokee Outlet to the freedmen of the Cherokee nation," the sum of one hundred and twenty-six thousand six hundred and sixty-six dollars, in full of all demands against the Cherokee nation, as per act above referred to and contract hereto attached.

ROBERT H. KERN,
Attorney of Record in Case Moses Whitmire, Trustee of Cherokee Freedmen, v. Cherokee Nation et al., in Court of Claims of the United States.
J. MILTON TURNER,
Per ROBERT H. KERN.

Deposition of Sam Houston Benge, for Claimants, Taken at Washington, D. C., on the 20th Day of October, A. D. 1899.

Claimant's counsel, M. E. Harby; defendants' counsel, John J. Hemphill.

SAM HOUSTON BENGE, having been produced as a witness on behalf of the plaintiffs, was by me sworn before any question was put to him to tell the truth, the whole truth, and nothing but the truth relative to the said cause, and thereupon deposed and said his name is Sam Houston Benge; that his occupation is that of farmer; that he is 67 years of age, and that his place of residence is Fort Gibson, Ind. T.; that he has no interest, direct or indirect, in the claim which is the subject of inquiry in said cause, and that he is not related to the plaintiffs, and thereupon said Sam Houston Benge was examined by the counsel for the plaintiffs, and in answer to interrogatories testified as follows:

1 question. Where were you born?
Answer. I was born in the State of Alabama.
2 question. When did you go to the Indian Territory?
Answer. When? 1838.
3 question. Are you a Cherokee?
Answer. Yes, sir.
4 question. Your father and mother were Cherokees?
Answer. My father was a white man; my mother was a Cherokee Indian.
5 question. Have you ever held any political positions in the Indian Territory? If so, please state what they were.

Answer. Well, I have had several. I have been a member of the council.

6 question. In what year was that?

Answer. Well, I can't tell exactly. It has been some thirty years ago. I was elected to that position when I was 23 years old.

7 question. When were you elected to the Cherokee senate?

Answer. I think it was in 1862.

8 question. From the Sequoyah district?

Answer. Yes, sir.

9 question. And you were reelected from the same district in 1865, weren't you?

Answer. Yes, sir.

10 question. Do you remember when you went to Fort Gibson—Illinois district?

Answer. I went to Illinois district in November, 1867.

331 11 question. And have you been elected senator from that district?

Answer. Yes, sir.

12 question. For how long, off and on?

Answer. I can't hardly tell, but I have been elected off and on in that district, and have been in public service for about thirty-five years.

13 question. Were you ever a delegate to Washington?

Answer. Yes, sir.

14 question. Will you please state the first occasion?

Answer. I started from the Cherokee nation in October, 1865, to this place as a delegate from the Cherokee nation.

15 question. As a delegate for what?

Answer. Representing the Cherokee people.

16 question. Do you remember the treaty of 1866 between the Cherokees and the United States?

Answer. Yes, sir.

17 question. What part did you have in that treaty?

Answer. I was one of the signers to it.

18 question. Who was commissioner then?

Answer. Cooley and Elisha Shells was acting with him.

19 question. I wish you would state at whose solicitation that treaty was made. State the facts that led up to it.

Answer. Well, before the war, of course, we had treaties with the Government, but when the Southern Confederacy seceded, the Confederacy compelled our authorities to make a treaty with them, and they treatied.

20 question. How did that lead up to this treaty of 1866?

Answer. Well, when the war ended, we, of course, wanted to have a new treaty with the Government of the United States, so as to place us right on record again. Had to do that in order to nullify the treaty with the Confederate States.

21 question. Who was it that wanted the Cherokee commissions to come here?

Answer. Well, the Cherokee national council was recommended by John Ross, who was chief at that time.

(Defendants' counsel objects to the answers above given relating to the Cherokee nation being compelled to treaty with the Confederate States and to the recommendation of John Ross, the principal chief, on the ground that if Ross made any such recommendation it ought to be in writing produced, and if there was any action taken by the Confederate States Government, that must be produced.)

22 question. After you came to Washington, did you meet with Mr. Cooley?

Answer. Yes, sir.

23 question. Consult with him?

Answer. Yes, sir.

24 question. He was very anxious to have this treaty made, was he not?

Answer. At that time we met together in a room and talked the matter over. That was the way we did, and then we would take a kind of synopsis of what we were doing.

(Defendants' counsel objected to the above question.)

25 question. Did Mr. Cooley say what was the purpose of
332 the United States in making that treaty, one article of which provides for the settlement of the friendly Indians among the Cherokees?

Answer. Well, he contended, you know, and insisted that there should be a clause in there, that the Cherokee people should take all friendly Indians adjacent to the Cherokee nation who wished to become citizens of the Cherokee country, and it was so agreed upon.

26 question. Did he say why they wanted that clause in?

Answer. He said there were a good many of the Indians now outside of the Indian Territory who were homeless and wanted homes.

(Defendants' counsel objects to any statement of the purposes assigned by Mr. Cooley in negotiations leading up to the treaty on the ground that they are incompetent and that the treaty itself is the best evidence of what was done.)

27 question. Mr. Benge, what acquaintance have you had in the Cherokee nation, with what might be called the leading men of the nation?

Answer. You mean, what acquaintance have I had?

28 question. Yes, sir.

Answer. Well, I have been acquainted with pretty nearly all the leading men; we served together as officers of the nation, were senators and representatives of both houses.

29 question. Do you remember when the Delawares and the Cherokees were negotiating with each other for the settlement of the Delawares amongst the Cherokees?

Answer. Yes, sir.

30 question. State what you remember about that.

Answer. Well, I remember that there was a delegation appointed composed of Mr. William P. Ross, who was then chief of the nation; Riley Keyes, Jesse Bushyhead, instructed by the Cherokee council to come to Washington and treaty with the Delaware Indians.

(By DEFENDANTS' COUNSEL:)

31 question. Were those instructions in writing?

Answer. Yes, sir.

(Defendants' counsel objects to any statement as to what these instructions were.)

32 question. Do you remember when the Delaware delegation went to Tahlequah in 1863?

Answer. In what year?

33 question. In 1863.

Answer. 63?

34 question. Yes.

Answer. Now, I won't be positive about dates.

35 question. Do you remember the circumstances?

Answer. I recollect seeing the two Journey-Cakes there. Sarcoxie and one or two others, that I don't recollect their names, composed the delegation of Delaware Indians at Tahlequah.

36 question. Do you remember the purpose of their visit?

Answer. Was to purchase land from the Cherokee people.

37 question. Do you remember when the delegation of Cherokees was sent to Washington to make a treaty with the Delawares?

Answer. Yes, sir.

38 question. Do you remember when the Delaware-Cherokee agreement of 1867, which we cite in our petition, was made?

Answer. Yes, sir.

333 39 question. The ratification of that treaty came up in the Cherokee senate, did it not?

Answer. Yes, sir.

40 question. And you were senator at the time?

Answer. I was.

41 question. Do you remember when this was?

Answer. It was in November, 1867.

42 question. Were you in favor of ratifying that treaty?

Answer. No, sir.

43 question. Why?

Answer. Because it was making sale of some lands which I was opposed to.

44 question. The matter was deliberated upon in the Cherokee senate?

Answer. Yes, sir; some deliberation.

45 question. Did you speak against it?

Answer. I did.

46 question. Can you give me an idea of what you said?

Answer. My objections was the selling of land. I claimed that the delegation was not instructed to sell lands.

47 question. You were not in favor of selling this land?

Answer. No, sir.

48 question. You objected to this treaty because it provided for the sale of lands?

Answer. Yes, sir.

49 question. Did you talk with other senators on this?

Answer. I talked with them and talked with Mr. Ross.

(Before these answers were taken down, defendants' counsel objected; testimony is incompetent because the arguments and reasons assigned by one senator or member of the legislative body is incompetent and can not in any way bear on the results reached by the body.)

50 question. Who was it that persuaded you to vote for the treaty?

Answer. Mr. James McDaniel.

51 question. How long have you known Mr. James McDaniel?

Answer. Well, I have known him for years. We served together in the Union Army. We always were friends. I will just relate how I came to vote for the ratification of that treaty. There is an old tradition among the Indians, who claim that the Delawares was the grandfather of the Cherokee people, and that they had sold out and were homeless still in the State of Kansas, and James McDaniel asked me to withdraw my objection so that we could help these people have homes, which I did, and voted for the ratification of the treaty.

(Defendants' counsel objected to the above answer before taken down because the reasons which influenced this witness in voting for this resolution are of no legal value, and the testimony is entirely incompetent.)

52 question. Did Mr. McDaniel address the senate on the subject of this treaty?

Answer. Yes, sir.

53 question. What did he say about having the Cherokees sell land to the Delawares?

Answer. Well, only what I have said. The Delawares—
334 now that is an old tradition there—that the Delawares was the grandfather of the Cherokee people. I have known that since I was a boy—that is, I have heard it talked about. He just asked the senators to ratify the treaty, so that their grandfathers could get homes in the Indian Territory.

54 question. Did he say that it was right or wrong to sell them this land?

Answer. He didn't say whether it was right or wrong. He just advocated the sale of it, so that those people might have homes.

55 question. Were other senators beside you originally opposed to it?

Answer. Well, no; if they were, they didn't make it known at that time.

56 question. What was the final result of the deliberation by the senate?

Answer. Well, they ratified the treaty.

57 question. Were there any dissenting votes?

Answer. No, sir.

58 question. Did the senate also deliberate on the question of the Delawares having Cherokee rights in addition to this purchase of land?

Answer. Well, the only thing now, so far as the purchase of the land was concerned. There is where the trouble was coming in—selling 160 acres to each individual for $160 in money. That is the number of Delawares who had registered to become citizens of the Cherokee country. In addition to that $160 they were required to pay $180 or $182 to the head to equalize the amount that we had invested here in Washington individually. To each individual it was estimated that there was coming about $182 out of the funds, and the Delawares were required to pay that amount for each of their people.

(Defendants' counsel objected before the above answers were taken down, because it is simply a statement of the construction of the witness upon the written contract and of the reasons which were supposed to have influenced him in acting upon the treaty. These are incompetent testimony and irrelevant.)

59 question. You are aware, Mr. Benge, that the Delaware-Cherokee treaty of 1867 says something about the Cherokee rights going to the Delawares. Was this part of the treaty deliberated upon by the Cherokee senate. I refer to the question of the Delawares having Cherokee rights in addition to the purchase of this land.

Answer. Well, when I stated a while ago that they separated the two questions, so far as the money was concerned—that is, the purchase of 160 acres of land, and then this addition to the money that was invested here. It was all embodied in one in the treaty and they voted upon it at the same time.

(Defendants' counsel objects to the above as being incompetent and irrelevant, and for the additional reason that the journals of the Cherokee senate are the best evidence of how these questions were voted upon.)

60 question. Did any senators object to this specific point, namely, that the Delawares were to have Cherokee rights besides being the owners of this land?

Answer. No, sir; when they ratified this treaty then the registered Delawares became citizens of the Cherokee country, and
335 they obtained from the nation a right which we have, as farmers, a right to our farms, an occupant right and occupant title, which is the best that they could give. We consider that title

equal almost to a title in the United States; that nobody can take our farms from us.

(Before the above answer was taken down defendants' counsel objected upon the ground that it is incompetent and irrelevant, and because the witness undertakes to construe the provisions of the written treaty or contract.)

61 question. This was an addition to that purchase or 160 acres?
Answer. Yes, sir.

62 question. Mr. Ross, who was one of the signers of this treaty, was in the Cherokee senate at the time of the ratification?
Answer. No, sir; he was chief of the nation.

63 question. Mr. Benge, in this treaty of 1867, between the Delawares and Cherokees, this language occurs: "The Cherokees, party of the first part, for and in consideration of certain payments and the fulfillment of certain conditions hereinafter mentioned agree to sell to the Delawares for their occupancy a quantity of land," etc. Now, with regard to those words "for their occupancy" I wish you would explain to me, from your knowledge as a senator and maker of the Cherokee laws, what those words mean, not in this agreement, but generally in the Cherokee Territory when they occur in other agreements?
Answer. Which, the occupancy? Well, as you read there, whatever it is, the consideration of so much they would sell to the Delawares for their occupancy. Occupancy means the title that the Cherokees can give, the only and the best they have.

(Defendants' counsel objected before the above answer was given, upon the ground that this is a construction of a written contract and an attempt to define the meaning of words used therein, which are both incompetent and irrelevant.)

64 question. Mr. Benge, do you understand what the people in the United States mean when they use the words "a title in fee simple"?
Answer. Yes, sir. That is, when they buy a piece of land, they get a title in fee simple for it. They hold it for their individual property.

65 question. What have you in the Indian Territory that corresponds to this, if anything?
Answer. Coming nearer to it, is the occupant's right and title; we consider that as good with us as it is in the United States here with your people. That it is a title fee simple, because the laws of our country protect us in our occupant title, as much so as the laws of the United States protect their people with the fee-simple right.

66 question. Your answer refers to the time when this change was made as well as the present?
Answer. Yes, sir.

(Defendants' counsel objects to the above on the ground that whatever the rights intended to be conveyed by the words used in matter

of legal construction and the testimony of this witness as to what they mean *are* incompetent and irrelevant.)

67 question. Mr. Benge, your principal chief, Mr. Ross, who was one of the signers of this agreement of 1867, was a Cherokee, was he not?

Answer. He was a Cherokee.

68 question. By birth?

Answer. By birth, but he looked like a white man.

336 69 question. What color hair did he have?

Answer. Well, I don't know—his hair was a light color.

70 question. What color was his eyes?

Answer. Blue.

71 question. Do you know whether Mr. Ross was half Indian or less than half Indian?

Answer. Oh, he had but very little Indian blood in him.

72 question. His father was a Scotchman, was he not?

Answer. Yes, sir.

73 question. Was he an educated man?

Answer. Yes, sir; he was a fine lawyer.

74 question. Where was he educated?

Answer. He told me he was educated at Princeton.

75 question. At Princeton university?

Answer. Yes, sir.

76 question. He practiced law down in the Indian Territory?

Answer. Yes, sir.

77 question. Mr. Benge, do you know anything of the custom amongst the citizens of the United States, when they sell land to each other, to guarantee or warranty the possession of that land?

Answer. In the Cherokee country?

78 question. No; in the United States.

Answer. Well, yes.

79 question. Do you know that that is a fact—in our titles we guarantee possession to it, to the man we sell it to?

Answer. Certainly; yes.

80 question. In that agreement of 1867, these words occur: "In case the Cherokee lands shall hereafter be allotted among the members of said nation, it is agreed that the aggregate amount of land herein provided for the Delawares to include their improvements according to the legal subdivisions when surveys are made; that is to say, 160 acres for each individual shall be granted to each Delaware." I call your attention to those words "shall be granted." Did you have any conversation with Mr. Ross about those words of guarantee in that treaty?

Answer. Well, no; but as a general thing, in selling, farmers trading their places to one another, we guarantee every sale we make just the same as you do in the States; there is not a bit of difference; we would not take a bill of sale if it was not guaranteed. I have sold several places and have bought several, and there was always a guaranty with it to me or my heirs forever.

The said witness was then cross-examined by counsel for defendants, and, in answer to interrogatories, testified as follows:

1 cross-question. What year was the treaty between the United States and the Cherokees made that you have referred to?

Answer. In 1866, the 19th day of July.

2 cross-question. After full conference between the commissioner, Mr. Cooley, and your delegation, they finally agreed upon that treaty, did they?

Answer. Yes, sir.

3 cross-question. And that was ratified by the Cherokee nation?

Answer. Yes, sir. It was amended by the Senate of the United States first—just a little alteration—and then it was ratified by the Cherokee council.

337 4 cross-question. As it was amended?

Answer. Yes, sir.

5 cross-question. Were you in the council when it was ratified?

Answer. I was in the senate; yes, sir.

6 cross-question. And you voted for it?

Answer. Yes, sir.

7 cross-question. Were there any objections made to it at that time? Were there being votes cast against it?

Answer. In the Cherokee council? No, sir.

8 cross-question. When you speak of the Cherokee council, you include both house and senate?

Answer. Both houses, just as you would say the Congress of the United States.

9 cross-question. The treaty between the Delawares and Cherokees was prepared by delegations from both nations, was it?

Answer. Yes, sir.

10 cross-question. Where was that treaty made?

Answer. It was made here in Washington.

11 cross-question. In Washington; that was subsequently ratified by the Cherokee council?

Answer. Yes, sir.

12 cross-question. Were you one of the delegates from the Cherokee nation at that time?

Answer. No, sir.

13 cross-question. [illegible] you a member of the senate at the time it was ratified?

Answer. Yes, sir.

14 cross-question. It was unanimously ratified by the council?

Answer. Yes, sir.

15 cross-question. By the senate? What about the house?

Answer. The house don't act upon it. I think at that time—I think there was a general meeting of the full council, and I want to make a correction of one thing. You asked me while ago in regard to the ratification of the treaty in 1866 by the national council. I want to state that the amendments to the treaty of 1866 by the Senate of the United States so changed things that we had to amend the

constitution of the Cherokee nation to corroborate, or whatever you might call it, to the treaty.

16 cross-question. That is, to coincide with it.

Answer. Yes, sir; a convention was called of the people of the Cherokee nation to vote upon an amendment of the constitution to coincide with the treaty of 1866.

17 cross-question. The lands of the Cherokees belong to the nation?

Answer. Belong to the Cherokee people in common, I should say.

Question by the notary. Do you know of any other matter relative to the claim in question?

Answer. No, sir.

SAM HOUSTON BENGE.

I, Harry H. Hollander, a notary public in and for the District of Columbia, certify that at the time and place aforesaid, Sam Houston Benge, witness on behalf of the plaintiff, in the above-entitled cause, was by me sworn before any questions were put to him to tell the truth, the whole truth, and nothing but the truth relative to
338 the said cause, and that the answers were taken down in my presence, and his deposition as above set forth was read over to and signed by him before me at the time and place aforesaid.

In witness whereof, I have hereunto set my hand and official seal this 21st day of October, 1899.

[SEAL.] HARRY H. HOLLANDER.

Deposition of Horace M. Adams, for Claimants, Taken at Washington, D. C., and Muscogee, Ind. T., on the 22d Day of March and the 29th Day of December, A. D. 1900, and the 19th Day of February, 1901, Respectively.

Claimants' counsel, M. E. Harby and Kenneth S. Murchison; defendants' counsel, John J. Hemphill and William T. Hutchings.

HORACE M. ADAMS, having been produced as a witness on behalf of the plaintiffs, was by me sworn before any question was put to him to tell the truth, the whole truth, and nothing but the truth relative to the said cause, and thereupon deposed and said his name is Horace M. Adams; that his occupation is that of a farmer; that he is 34 years of age, his place of residence is Chelsea, Ind. T., and that he is one of the plaintiffs in this action and is the brother of Richard C. Adams, one of the plaintiffs mentioned in this action.

And thereupon said Horace M. Adams was examined by the counsel for the plaintiffs, and in answer to interrogatories, testified as follows:

1 question. Mr. Adams, you are a Delaware?

Answer. Yes, sir.

2 question. And a citizen of the Cherokee nation?

Answer. Yes, sir.

3 question. Have you examined personally the land in possession of the Delaware Indians and occupied by them in the Indian Territory to any extent?

Answer. Yes, sir.

4 question. At the present time how many acres, to your knowledge, are occupied by the Delaware Indians in Indian Territory?

Answer. 42,713.23.

5 question. Do you know Cyrus Washington?

Answer. Yes, sir.

6 question. Is he a Delaware?

Answer. Yes, sir.

7 question. Does he live in Indian Territory?

Answer. Yes, sir.

8 question. Does he occupy land there?

Answer. Yes, sir.

9 question. Is the land improved?

Answer. Part of it is.

10 question. Have you seen that land?

Answer. Yes, sir.

11 question. Can you say where on the map of the Indian Territory that land is situated?

Answer. Yes, sir.

12 question. Where is it?

Answer. It is in township 25 north, range 19 east of Indian meridian; the south half of section 29; the north half of northwest quarter of section 32, and northwest quarter of northeast quarter of section 32.

339 13 question. How many acres does that comprise?

Answer. Four hundred and forty acres.

14 question. I show you a map entitled "Township No. 25, range No. 19 E., Ind. mer." Is this land of Cyrus Washington set out on this map?

Answer. Yes, sir.

15 question. Describe how it is set out.

Answer. In the plat painted red.

16 question. Do you know John Secondyne?

Answer. Yes, sir.

17 question. Is he a Delaware?

Answer. Yes, sir.

18 question. Residing in the Indian Territory?

Answer. Yes, sir.

19 question. Does he occupy any land there?

Answer. Yes, sir.

20 question. Have you been on his place?

Answer. Yes, sir.

21 question. State what you know of the land occupied by John Secondyne.

Answer. I went on the land of John Secondyne, and he showed me the metes and boundaries of his land, which I have painted on a map here in yellow.

22 question. Is the map you refer to entitled "Township No. 25, range No. 19 E., Ind. mer."?

Answer. Yes, sir.

23 question. How many acres does John Secondyne occupy?

Answer. Four hundred and forty acres.

24 question. Does he live on this place?

Answer. Yes, sir.

25 question. Has he improved it?

Answer. Yes, sir.

26 question. Did you go over the metes and bounds of that place?

Answer. Yes, sir.

27 question. Is it accurately set out on this map?

Answer. Yes, sir.

28 question. Please describe, as you described the property of Washington, just what the property of Secondyne is by metes and bounds.

Answer. It is the south half of section 32, and the south half of the northeast quarter of section 32, and the northeast quarter of the northeast quarter of section 32; all in township 25, range 19 east, Indian meridian.

(Said map is offered in evidence, township No. 25, range 19 east, Indian meridian, containing the property of Cyrus Washington and John Secondyne, marked "Plaintiffs' Exhibit BB.")

29 question. In what color is the land of John Secondyne set forth?

Answer. In yellow.

30 question. Do you know the family of Cyrus Washington?

Answer. Yes, sir.

31 question. Has he got a wife?

Answer. Yes, sir.

32 question. Any children?

Answer. Yes, sir.

33 question. How many children?

340 Answer. I don't know how many children; he has several.

34 question. What do you mean by several; more than what number?

Answer. More than two.

35 question. He has more than two children?

Answer. Yes, sir.

36 question. Do you know how many children John Secondyne has?

Answer. No, sir.

37 question. Has he got a wife?

Answer. No, sir; his wife is dead.

38 question. Are there any members of his family living with him?

Answer. Yes, sir.

39 question. How many?

Answer. I don't know how many he has; I understand he has five or six children.

40 question. Did you see any of his children?

Answer. Yes, sir.

41 question. How many have you seen at a time?

Answer. I do not remember.

42 question. Have you seen two—three?

Answer. Yes; I have seen two or three at a time.

43 question. Do you know Louis Shawnee?

Answer. Yes, sir.

44 question. Is he a Delaware?

Answer. Yes, sir.

45 question. Living in the Cherokee nation?

Answer. Yes, sir.

46 question. Have you been on his property?

Answer. Yes, sir.

47 question. Have you examined it?

Answer. Yes, sir.

48 question. State where he lives, and just what examination you made of his property, and how many acres it is.

Answer. He occupies two pieces of land; one piece is in township 24, range 19 east, Indian meridian. It is the west half of the southwest quarter of section 6.

49 question. I show you a map marked "Township No. 24, range No. 19 E. of Ind. mer." and ask you if this is a correct map of the property you have just described?

Answer. Yes, sir.

(Said map, township 24, range 19 east, Indian meridian, is placed in evidence and marked "Plaintiffs' Exhibit CC.")

50 question. This property is in the Cherokee nation?

Answer. Yes, sir.

51 question. It is improved?

Answer. Yes, sir.

52 question. This man occupies it?

Answer. Yes, sir.

53 question. He claims it to be his own?

Answer. Yes, sir.

54 question. What did you do with regard to this property when you were down there?

Answer. I asked him how much land he claimed and occupied, and he showed me by the corner stones on the land.

341 55 question. Did you go over the land?

Answer. I went over the land to the corner stones and marked it on my map.

56 question. Does Louis Shawnee occupy any other land besides this that you have just mentioned?

Answer. Yes, sir.

57 question. What other land does he occupy?

Answer. He occupies a piece in township 24, range 18 east, Indian meridian.

58 question. Have you seen that land?

Answer. Yes, sir.

59 question. State what you did with regard to that land; what examination you made; whether you saw it.

Answer. I went over the land with Louis Shawnee and went to the corner stones or Government survey stones, and he showed me what he claims as his land, that he was in possession of.

60 question. In what condition is that land?

Answer. It is improved.

61 question. Do you know where that land is?

Answer. Yes, sir.

62 question. Please say where it is.

Answer. It is in township 24, range 18 east, Indian meridian; east half of section 1 and north half of the northeast quarter of section 12.

63 question. How many acres does that comprise?

Answer. 411.04.

64 question. I show you a paper marked "Township No. 24, range No. 18, E. of Ind. mer.," and ask you if that is a correct map of the property as you have just described it?

Answer. Yes, sir.

(This is offered and received in evidence, and marked "Plaintiffs' Exhibit DD.")

65 question. Do you know Dr. Rufus Allen?

Answer. Yes, sir.

66 question. State who he is, where he resides, and what you know of him. What is his nationality?

Answer. Dr. Rufus Allen lives in the Cherokee nation, Indian Territory, and occupies land in township 26, range 17 east, Indian meridian. He has a Delaware family.

67 question. What do you know about the land that he occupies?

Answer. I saw the land; I have been over it, and have its description here on this map.

68 question. How many different, separate pieces of land do Dr. Allen and his family occupy?

Answer. Five.

69 question. How many members of his family are there?

Answer. I don't know how many members there are.

70 question. How many have you seen?

Answer. I have seen four or five.

71 question. Does Dr. Allen occupy this land as his own, or how does he occupy this land?

Answer. He occupies it as land belonging to himself and family.

72 question. Take the first piece of land occupied by Dr. Allen, and say where it is.

342 Answer. He has a plot of 240 acres, which is the northeast quarter of section 7 and the north half of the southeast quarter of section 7, township 26, range 17 east, Indian merid-

ian. The next plot he occupies is 720 acres, which is the south half of the southeast quarter of section 18, and the west half of section 17, and the southwest quarter of the southeast quarter of section 17, and the northeast quarter of section 20, and the east half of the northwest quarter of section 20, north half of north half of northeast quarter of section 19. He occupies also a plot numbering 80 acres, which is the south half of the southwest quarter of section 16.

73 question. Have you been over this land?

Answer. Yes, sir.

74 question. In what condition is it?

Answer. It is improved.

75 question. Does this man live on it?

Answer. Yes, sir; he lives on one piece and has tenants on the rest of it.

76 question. Does he claim it for his own and that of his family?

Answer. Yes, sir.

77 question. Do you know Charles F. Armstrong?

Answer. Yes, sir.

78 question. State what you know of him, what his nationality is, and where he lives.

Answer. He is a Delaware Indian; he lives in the Cherokee nation, Indian Territory.

79 question. Have you seen his land?

Answer. Yes, sir.

80 question. What knowledge have you of his land, and how did you get that knowledge?

Answer. I have been over his land, and he showed me the amount that he claims by metes and boundaries.

81 question. What did you do with regard to making yourself familiar with the quantity of this land?

Answer. I taken my township map with me and compared the metes and boundaries by the Government survey.

82 question. When you say "metes and boundaries," what do you mean?

Answer. I mean the boundaries of his land in legal subdivisions.

83 question. You do not mean metes and boundaries as a surveyor would stretch it out, in feet and inches?

Answer. No, sir.

84 question. When you say "legal subdivisions," what do you mean?

Answer. I mean the divisions that appear on the Government survey.

85 question. Describe Charles F. Armstrong's land by legal subdivisions, and state how you are enabled to so describe it.

Answer. He has the southeast quarter of section 19; the south half of the northeast quarter of section 19, and the south half of the north half of the northeast quarter of section 19, all in township 26 north, range 17 east of Indian meridian.

86 question. How many acres does Armstrong occupy?

Answer. Two hundred and eighty.

87 question. Has Armstrong got any family?

Answer. Yes, sir.

343 88 question. How many?

Answer. I think he has one child and a wife.

89 question. Do you know Henry Armstrong?

Answer. Yes, sir.

90 question. State his nationality, where he resides, where he occupies any land, where it is, and what you know about it.

Answer. He lives in the Cherokee nation, Indian Territory; he has a family of four or five—a wife and about four children; he has 714.76 acres in his possession. I have been over his land, and he showed me the number of acres that he claimed, and he showed me his right of occupancy by having it improved. He lives on it. He has all of section 30 and the south half of the northwest quarter of section 29, all in township 26 north, range 17 east of Indian meridian.

91 question. What is the total area of Henry Armstrong's land just described?

Answer. 714.76 acres.

92 question. Do you know Albert Armstrong?

Answer. Yes, sir.

93 question. State what you know of him, where he lives, what his nationality is, whether he occupies any land, how many members of his family, and what you know about his family and his land.

Answer. Albert Armstrong is a Delaware Indian; he lives in the Cherokee nation, Ind. T.; he occupies some land; he has a wife and two children. I looked at the land, and he showed me what he occupied; he lives on it; he has the north half of the northwest quarter of section 29, and the southwest quarter of section 29, and the east half of the northwest quarter of section 32, all in township 26 north, range 17 east of Indian meridian.

94 question. How many acres does that comprise altogether?

Answer. The north half of the northwsst quarter of section 29 has 80 acres; the balance described is 240 acres.

95 question. I show you a paper marked "Township No. 26 N., range No. 17 E., of Ind. mer.," on which there appear a number of plats set out in light red, marked 240, 520, and 80. I ask you what these plats represent?

Answer. It represents land belonging to Dr. Rufus Allen, which I have just testified to.

96 question. On the same paper there appears a plat painted light yellow, marked 280, and I ask you what that plat represents?

Answer. That represents the land of Charles F. Armstrong, which I have just testified to.

97 question. I show you a plat painted in Indian red, marked 714.76, and ask you what that plat represents?

Answer. That represents the land of Henry Armstrong, which I have just testified to.

98 question. I show you on the same piece of paper a plat painted in green, marked 80 and 240, and ask you what that plat represents?

Answer. That represents the land of Albert Armstrong, which I have just testified to.

(The said paper is offered in evidence, marked "Plaintiffs' Exhibit EE."

Counsel for defendant objects to the witness refreshing his memory or referring in any way to the plats—several small plats that have been offered in evidence—and objects to the plats themselves as being proper evidence in the case, for the reason that they seem to have been made up not by the witness at the time that the land was examined, and that he had not sufficient knowledge to make up such a plat or exhibit as he undertakes to show.)

344

99 question. Do you know Lilly Tanner?

Answer. Yes, sir.

100 question. Where does she live?

Answer. She lives in the Cherokee nation, Ind. T.

101 question. Does she occupy any land?

Answer. Yes, sir.

102 question. How do you know? Show me her land.

Answer. She has a tenant living on the land; it is the home place of herself and brothers for a great many years.

103 question. How long have you known Lilly Tanner?

Answer. About twenty years.

104 question. How long have you known the land that she occupies?

Answer. About fifteen years.

105 question. You have known the land itself for that long?

Answer. Yes, sir; I have known the land itself.

106 question. Are you able to point that land out upon a map?

Answer. Yes, sir.

107 question. How are you able to do so?

Answer. By being over the land and getting the landmarks, and by the use of a township map.

108 question. What township map do you refer to?

Answer. Township 25 north, range 17 east, of Indian meridian.

109 question. What map is that you mean, "by use of the township map"?

Answer. By use of the township map in which the land is located.

110 question. I ask you what map do you mean; did you use any map in locating this land?

Answer. Yes; I used the Government map.

111 question. Where did you get that Government map?

Answer. From the Land Office, in Washington.

112 question. How did you use that Government map in locating this land?

Answer. By going to the monuments or landmarks that were

placed on the land by the Government surveyors and getting the location of the property from these landmarks.

113 question. Did you use this map with the land that you have already testified to as belonging to other parties?

Answer. Yes, sir.

114 question. Is this the manner in which you located all the land which you are testifying to?

Answer. Yes, sir.

115 question. I show you a paper marked "Township No. 23 N., range No. 15 E., of Ind. mer.," which paper has signed in the right-hand corner the following:

"The above map of township No. 23 north, of range No. 15 east, of the Indian meridian, Indian Territory, is strictly conformable to the field notes of the survey thereof on file in this office, which have been examined and approved.

"CHAS. D. WALCOTT, *Director.*

"U. S. Geological Survey, Washington, D. C., March 2, 1898."

345 On the left hand corner of this map appears:

"Land area, 22,928.10 acres; water area, 176.74 acres; total number of acres, 23,104.84."

Under these words appears as follows:

Surveys designated.	By whom surveyed.
Township lines.	R. A. Farmer.
Subdivisions.	F. M. Johnson and Fred Watts, Jr.
Meanders.	F. M. Johnson.

Amount of survey.	When surveyed.
M. Chs. Lks.	
24 0 45	Mar. 24. Apr. 7, 10, and 11, 1896.
60 3 14	Aug. 18–25, 1896.
7 38 86	Do.

Is this the map that you obtained from the Government?

Answer. That is one of them.

116 question. Did you use maps like this in identifying the lands that you have testified to?

Answer. Yes, sir.

117 question. You regard these maps as showing what they pretend to show?

Answer. Yes, sir.

118 question. You obtained them from the Government Land Office?

Answer. Yes, sir.

119 question. When you examined these lands did you identify them on these maps?

Answer. Yes, sir.

120 question. How did you identify them?

Answer. By going to the corner stones or monuments and comparing them with the Government map.

(Counsel for plaintiffs states that the maps are not offered in evidence because they are of record in the United States Government, and it is not necessary to burden the printed record in this case with them.)

121 question. State what you did with regard to Lilly Tanner's land in connection with these maps which you have testified to.

Answer. I went over the ground and obtained the location by the Government corner stones on the land, and marked it on my map.

122 question. How much land does she occupy?

Answer. Two hundred and forty acres.

123 question. I show you a paper marked "Township No. 25 N., range No. 17 E., Ind. mer.," and ask you if Lilly Tanner's land is set out correctly upon that paper?

Answer. Yes, sir.

124 question. How is it painted on that paper?

Answer. It is painted in red lines.

125 question. Do you know James Tanner?

Answer. Yes, sir.

126 question. Where does he live?

Answer. He lives in the Cherokee nation.

346 127 question. What is his nationality?

Answer. He is a Delaware.

128 question. Does he occupy any land?

Answer. Yes, sir.

129 question. How do you know?

Answer. Because he lives on it; I have been there and seen it.

130 question. Has he any family?

Answer. No, sir.

131 question. What examination did you make of his land, if any?

Answer. I went to the corner stones and taken its location as he gave it to me from the corner stones on the land.

132 question. Did you identify this location of his land by the aid of any map, or written or printed record?

Answer. Yes, sir.

133 question. What map did you use?

Answer. The Government map of township 25 N., range 17 E. of Ind. mer.

134 question. This Government map is one of the Government maps heretofore described by you?

Answer. Yes, sir.

135 question. How many acres does he occupy?

Answer. One hundred and sixty acres.

136 question. Is it improved?
Answer. Yes, sir.
137 question. Does he live on it?
Answer. Yes, sir.
138 question. I show you a paper marked "Township No. 25 N., range No. 17 E., Ind. mer.," and ask you if the land he occupies appears upon that paper?
Answer. Yes, sir.
139 question. In what color is it painted?
Answer. It is painted green.
140 question. Do you know E. M. Lorence?
Answer. Yes, sir.
141 question. What is his nationality?
Answer. He is a white man with a Delaware family.
142 question. Where does he live?
Answer. He lives in the Cherokee nation, Indian Territory.
143 question. What is the size of his family?
Answer. He has four children.
144 question. Wife living?
Answer. Yes, sir.
145 question. You know her?
Answer. Yes, sir.
146 question. Know the whole family?
Answer. Yes, sir.
147 question. How long have you known them?
Answer. I have known Lorence for ten or twelve years.
148 question. Do you know that the family are Delawares?
Answer. Yes, sir.
149 question. Do they occupy any land, and have you seen it?
Answer. Yes, sir.
150 question. Have you made any examination of it?
Answer. Yes, sir; I have been over it.
347 151 question. Do you know where that land is located?
Answer. Yes, sir.
152 question. How do you know?
Answer. By being over the land and by the use of a Government township map, as heretofore testified to.
153 question. Has he improved that land?
Answer. Yes, sir.
154 question. Does he live on it?
Answer. Yes, sir.
155 question. How many acres is that land?
Answer. 600.
156 question. I show you a paper marked "Township No. 25 N., range No. 17 E., Ind. mer.," and ask you if that land appears upon it?
Answer. Yes, sir.
157 question. How is it identified?
Answer. By being painted yellow.
158 question. Do you know Mrs. Addie Lorence?

Answer. Yes, sir.
159 question. Who is she?
Answer. She is the wife of E. M. Lorence; she is a Delaware Indian.
160 question. Has she a family?
Answer. Yes, sir.
161 question. The family she has is the same family her husband has?
Answer. No; she has a different family; she has two children.
162 question. Who is the father of these children?
Answer. Sam Love is the father of one of them and Charles Merritt is the father of the other one.
163 question. Does she occupy that land?
Answer. Yes, sir.
164 question. Live on it?
Answer. Yes, sir.
165 question. Have you seen it?
Answer. Yes, sir.
166 question. Have you located it?
Answer. Yes, sir.
167 question. How have you located it?
Answer. By a Government map, as I have before testified to.
168 question. Do you know how many acres that land is?
Answer. Four hundred and eighty acres.
169 question. How do you estimate the number of acres?
Answer. By the use of the Government map.
170 question. I show you a paper marked "Township No. 25 N., range No. 17 E. of Ind. mer.," and ask you if that land appears upon that paper?
Answer. Yes, sir.
171 question. How is it identified upon that paper?
Answer. By the plat painted brown.
172 question. You know William Adams?
Answer. Yes, sir.
173 question. Who is he?
Answer. He is my father, a Delaware Indian.
174 question. Has he any family?
348 Answer. Yes, sir.
175 question. What is his family?
Answer. A wife and seven children.
176 question. Do you know his land?
Answer. Yes, sir.
177 question. How long have you known it?
Answer. Twenty-five years.
178 question. Do you know where that land is?
Answer. Yes, sir.
179 question. How have you identified it?
Answer. By the use of the Government map, as before testified.
180 question. How many acres is that land?
Answer. Six hundred and forty acres.

181 question. I show you a paper marked "Township 25 N., range No. 17 E., Ind. mer.," and ask you if that land appears upon that paper?

Answer. Yes, sir; it does, and is in the plat painted red.

182 question, Taylor Roberts, who is he?

Answer. He is a white man and has a Delaware family; a wife and two or three children.

183 question. Where does he live?

Answer. In Indian Territory, Cherokee nation.

184 question. He occupies land there?

Answer. Yes, sir.

185 question. Does he live on it?

Answer. No, sir; he has a tenant on it.

186 question. Is the land improved?

Answer. Yes, sir.

187 question. Does he claim it as his own and that of his family?

Answer. Yes, sir.

188 question. Have you located it?

Answer. Yes, sir.

189 question. How have you identified it?

Answer. By the use of Government maps, as heretofore testified to.

190 question. How many acres is that land?

Answer. One hundred and sixty.

191 question. I show you a paper marked "Township No. 25 N., range No. 17 E. of Ind. mer.," and ask you if that land appears upon that paper?

Answer. Yes, sir; it is painted with light-green lines.

(This paper is offered in evidence and marked "Plaintiffs' Exhibit FF.")

192 question. Tell me how James Tanner's land, which appears in green upon Plaintiffs' Exhibit FF, is described.

Answer. It is the west half of the northeast quarter of section 20 and the east half of the northwest quarter of section 20, of township 25 north, range 17 east of Indian meridian.

193 question. Describe Lilly Tanner's land on Plaintiffs' Exhibit FF.

Answer. Lilly Tanner's land is the southeast quarter of the northeast quarter of section 20 and the northeast quarter of the southeast quarter of section 20, and the south half of the northwest quarter of section 21, the north half of the southwest quarter of section 21, all in township 25 north, range 17 east of Indian meridian.

349 194 question. Describe Addie Lorence's land as it appears on Plaintiffs' Exhibit FF.

Answer. She has the south half of the northeast quarter of section 30 and the southeast quarter of section 30, the east half of the southwest quarter of section 30 and the southwest quarter of section 29, all in township 25 north, range 17 east, Indian meridian.

195 question. Describe E. M. Lorence's land as it appears on the Plaintiffs' Exhibit FF.

Answer. He has southeast quarter of section 29 and the west half of the southwest quarter of section 28, and southeast quarter of the southwest quarter of section 28, the northeast quarter of section 32 and northwest quarter of section 33, all in township 25 north, range 17 east of Indian meridian.

196 question. Describe Taylor Roberts's land as it appears on plaintiffs' exhibit.

Answer. He has the southeast quarter of section 32.

197 question. Describe William Adams's land as it appears on Plaintiffs' Exhibit FF.

Answer. He has the west half of section 32 and the east half of section 31, all in township 25 north, range 17 east of Indian meridian.

198 question. Does your father, William Adams, occupy any land besides the land which you have just testified to?

Answer. Yes, sir.

199 question. What land is that?

Answer. It is in the township immediately south of the one before described.

200 question. Describe that township.

Answer. It is township 24 north, range 17 east of Indian meridian.

201 question. How much land is this?

Answer. 211.26 acres.

202 question. Is it improved?

Answer. Yes, sir.

203 question. Does he occupy it—live on it?

Answer. Yes, sir.

204 question. Have you been over it and examined it?

Answer. Yes, sir.

205 question. How have you identified it?

Answer. By the use of the Government maps, as heretofore testified to.

206 question. Describe this land of your father's.

Answer. It is a plot of 211.26 acres and is the northeast quarter of the northeast quarter of section 6 and the north half of the north half of section 5, in township 24 north, range 17 east of Indian meridian.

207 question. Do you know Mrs. Tom Wilson?

Answer. Yes, sir.

208 question. What is her nationality?

Answer. Delaware Indian.

209 question. Does she have any family?

Answer. Yes, sir.

210 question. How much?

Answer. She has a husband and one daughter.

211 question. Does she live in the Indian Territory?

Answer. Yes, sir.

350 212 question. Does she occupy any land there?

Answer. Yes, sir.

213 question. What land does she occupy?

Answer. She occupies the southwest quarter of section 7 and the south half of the northwest quarter of section 7, township 24 north, range 17 east, Indian meridian.

214 question. How do you know she occupies that land?

Answer. I have been to her house. She lives on it.

215 question. Is it improved?

Answer. Yes, sir.

216 question. How did you identify the land as you have described it?

Answer. I used the Government map, as I have heretofore testified to.

217 question. I show you a paper marked "Township No. 24 N., range No. 17 E. of Ind. mer.," and ask you if your father's additional land of 211.26 acres appears on that paper; and if so, how is it marked?

Answer. It is marked in red lines.

218 question. How does Mrs. Tom Wilson's land appear on that paper, if at all?

Answer. It is marked in green.

219 question. Do you know Mark Zulkey?

Answer. Yes, sir.

220 question. What is he?

Answer. He is a white man with a Delaware family. He lives in the Cherokee nation, Indian Territory.

221 question. How much is his family?

Answer. One wife and six or seven children.

222 question. Does he occupy any land in the Cherokee nation?

Answer. Yes, sir.

223 question. State what land he occupies.

Answer. He occupies the southwest quarter of section 3, the southeast quarter of section 4, the northeast quarter of section 9, the north half of the southeast quarter of section 9, all in township 24 north, range 17 east of Indian meridian.

224 question. Have you seen that land? Have you been over it?

Answer. Yes, sir.

225 question. Does he live on it?

Answer. He has a tenant on it.

226 question. Is it improved?

Answer. It is well improved.

227 question. Does he claim it as his own and that of his family?

Answer. Yes, sir.

228 question. How many acres is that land?

Answer. Five hundred and sixty.

229 question. How have you identified this land?

Answer. By being over it and the use of the Government map, as I have heretofore testified to.

230 question. I show you a paper marked "Township No. 24 N., range No. 17 E. of Ind. mer.," and ask you if that land appears upon that paper and how it is marked?

Answer. Yes, sir; by being painted yellow.

231 question. Do you know Joshua Wilson?

Answer. Yes, sir.

351 232 question. What is his nationality; is he married; and if so, how much is his family?

Answer. He is a Delaware Indian, residing in the Cherokee nation, Indian Territory; has a wife, and I do not know whether he has any children or not.

233 question. Does he occupy any land there?

Answer. Yes, sir.

234 question. Is it improved?

Answer. Yes, sir.

235 question. Is it improved and does he live on it?

Answer. Yes, sir.

236 question. Does he claim it for his own and that of his family?

Answer. Yes, sir.

237 question. How many acres is that land?

Answer. Five hundred and sixty.

238 question. Where is that land located?

Answer. It is located in the northwest quarter of section 15, north half of section 16, east half of the northeast quarter of section 17, in township 24 north, range 17 east, Indian meridian.

239 question. How do you know that is the land that you saw him occupy?

Answer. Because I was on the land and identified it by means of the Government maps, as heretofore testified to.

240 question. Do you know Calvin Everett?

Answer. Yes, sir.

241 question. He is a Delaware Indian?

Answer. Yes, sir.

242 question. State where he lives; how much his family is.

Answer. He has a Delaware wife and four or five children. He lives in the Indian Territory, Cherokee nation, and occupies land.

243 question. Have you seen that land?

Answer. Yes, sir.

244 question. Does he live on it?

Answer. He has a tenant on it.

245 question. Is it improved?

Answer. Yes, sir.

246 question. Does he claim it for his own and that of his family?

Answer. Yes, sir.

247 question. What land is that?

Answer. It is the southeast quarter of section 17, the northwest quarter of section 17, the west half of the northeast quarter of section 17, township 24 north, range 17 east, Indian meridian.

248 question. How have you identified this land?

Answer. By use of the Government maps, as heretofore testified to.

249 question. I show you a paper marked "Township No. 24 N., range No. 17 E. of Ind. mer.," and ask you if that land appears upon that paper?

Answer. Yes; it is marked in green lines.

250 question. Do you know Mary Parker?

Answer. Yes, sir.

251 question. What is her nationality? Where does she live?

Answer. She is a Delaware and lives in the Cherokee nation, Indian Territory.

252 question. Does she occupy land, improved or unimproved?

Answer. Yes, sir; improved.

352 253 question. Does she live on it?

Answer. Yes, sir.

254 question. Where is that land?

Answer. South half of section 16, north half of the north half of section 21, northwest quarter of section 22, and the west half of the southwest quarter of section 15, all in township 24 north, range 17 east, Indian meridian.

255 question. How many acres?

Answer. 720.

256 question. How many acres does Calvin Everett occupy?

Answer. 400.

257 question. How many acres does Joshua Wilson occupy?

Answer. 560.

258 question. With regard to Mary Parker's land, how have you identified the location of that land?

Answer. By the use of the Government map, as heretofore testified to. I examined the land myself and used the Government map myself.

259 question. I show you a paper marked "Township No. 24 N., range 17 E. of Ind. mer.," and ask you if that land of Mary Parker's appears thereon?

Answer. Yes, sir. It is marked in light pink.

260 question. Do you know Tom Lewis?

Answer. Yes, sir. He is an adopted Delaware.

261 question. Where does he live and how much is his family, and what does it consist of?

Answer. He has a Delaware wife and no children; he lives in the Cherokee nation, Indian Territory.

262 question. Does he occupy any land there?

Answer. Yes, sir.

263 question. Is it improved?

Answer. Yes, sir.

264 question. Does he claim it for his own?

Answer. Yes, sir.

265 question. Does he live on it?

Answer. He lives on it.

266 question. Have you seen it?

Answer. I have.

267 question. Where is that land?

Answer. It is the southwest quarter of section 17, northwest quarter of section 20, north half of northeast quarter of section 20, township 24 north, range 17 east, Indian meridian.

268 question. How many acres is that?

Answer. 400.

269 question. How have you identified that land?

Answer. By being over it and the use of the Government map, as heretofore testified.

270 question. I show you a paper marked "Township No. 24 N., range No. 17 E. of Ind. mer.," and ask you if that land appears thereon?

Answer. Yes; it is marked in very pale green.

271 question. Do you know a gentleman named R. C. Adams?

Answer. Yes, sir.

272 question. Who is he?

353 Answer. He is my brother and a Delaware Indian.

273 question. Does he live in the Indian Territory, Cherokee nation?

Answer. No, sir; he is temporarily residing in Washington.

274 question. Has he any land out there?

Answer. Yes, sir.

275 question. Do you know of any land that he happens to have?

Answer. Yes, sir; I know of a good deal.

276 question. State the land that you know he has.

Answer. In township 24 north, range 17 east of Indian meridian, he has the following lands: A plot of 314.60 acres, which is described as follows: North half of section 18; a plot of 320 acres which is described as follows: South half of the north half of section 21 and the southeast quarter of section 21; a plot of 240 acres which is described as follows: Southeast quarter of section 27, south half of the northeast quarter of section 27; 200 acres, which is described as follows: Northeast quarter of section 35, and northwest quarter of southeast quarter of section 35; a plot of 400 acres, which is described as follows: Southeast quarter of section 32, and northwest quarter of section 32, north half of the southwest quarter of section 32, all in township 24 north, range 17 east, Indian meridian, and painted red upon a paper so marked.

277 question. Has R. C. Adams any family?

Answer. Yes, sir; he has a wife and three children.

278 question. I show you a paper marked "Township No. 24 N., range No. 17 E., Ind. mer.," and ask you if that is the paper that you have been referring to under that title?

Answer. Yes, sir.

(Placed in evidence and marked "Plaintiffs' Exhibit GG.")

279 question. Do you know of any other land besides that just mentioned that R. C. Adams has; and if so, where and how is it described?

Answer. I know of some more land in township 23 north, range 17 east, Indian meridian, which is east half of section 4 and the west half of the northwest quarter section 3, consisting of 405.20 acres.

280 question. Have you seen this land—have you been over it—how have you identified it?

Answer. Yes, sir; by the use of a Government map, as heretofore testified to.

281 question. I show you a paper marked "Township No. 23 N., range No. 17 E., Ind. mer.," and ask you if this plot of 405.20 acres appears upon said paper and how is it identified?

Answer. It does, by being painted red.

(Said paper placed in evidence and marked "Plaintiffs' Exhibit HH.")

282 question. Do you know S. A. Miller?

Answer. Yes, sir.

283 question. Is he a Delaware?

Answer. Yes, sir. He lives in the Cherokee nation, Indian Territory; occupies land there.

284 question. Is he married, and has he got a family?

Answer. Yes, sir; a wife and four or five children.

285 question. Is the land that he occupies improved?

Answer. Yes, sir.

354 286 question. Does he claim it for his own and that of his family?

Answer. Yes, sir.

287 question. Have you seen that land?

Answer. Yes, sir.

288 question. How have you identified its location?

Answer. By the use of the Government map, as heretofore testified to.

289 question. Where is that land?

Answer. He has 520 acres, which is described as follows: East half of the west half of section 18 and the east half of section 18; the southwest quarter of the southwest quarter of section 17 in township 27 north, range 16 east, Indian meridian.

290 question. I show you a paper marked "Township No. 27 N., range No. 16 E. of Ind. mer.," and ask you if S. A. Miller's land appears upon that paper; and if so, how it is identified?

Answer. It does appear upon that paper, and is painted red.

291 question. Do you know Mrs. Mary McClure?

Answer. Yes, sir; she is a Delaware Indian; she lives in the Cherokee nation, Indian Territory; she occupies the northeast quarter of section 30, township 27 north, range 16 east, Indian meridian.

292 question. How many acres is that?

Answer. One hundred and sixty.

293 question. Have you seen that land? How are you able to so describe it?

Answer. By seeing the land and being over it, and by the use of the Government map as I have heretofore testified to.

294 question. Have you identified the location of that land upon

that Government map in the way you have testified to in regard to monuments placed there by the Government?

Answer. Yes, sir.

295 question. I show you a paper, marked "Township No. 27 N., range No. 16 E. of Ind. mer.," and ask you if that land appears upon that paper?

Answer. Yes, sir; and it is painted yellow.

(Said paper placed in evidence and marked "Plaintiffs' Exhibit II.")

296 question. Does S. A. Miller, of whom you have just testified, occupy any more land; if so, where is it and how is it described?

Answer. Yes; he occupies more land, and it is described as follows: All of section 6 and the south half of the southwest quarter of section 5; the north half of the northwest quarter of section 7; the northwest quarter of the northeast quarter of section 7; all in township 26 north, range 16 east, of Indian meridian.

297 question. How many acres is that?

Answer. Eight hundred and thirty-eight and eighty hundredths.

298 question. Have you seen that land?

Answer. Yes, sir; I was over it.

299 question. Is it improved?

Answer. Yes, sir.

300 question. How have you identified its location?

Answer. By being over the land and the use of Government map, as I have heretofore testified to.

301 question. Do you know I. N. Journeycake?

Answer. Yes, sir; he is a Delaware.

302 question. Does he live in the Indian Territory, Cherokee nation?

355 Answer. Yes, sir.

303 question. Does he occupy any land?

Answer. Yes, sir.

304 question. Have you seen it? Does he live on it?

Answer. Yes, sir.

305 question. Is it improved?

Answer. Yes, sir.

306 question. Is he married, and how many children?

Answer. He has a wife and four or five children.

307 question. This land that you have just mentioned, belonging to Mr. Journeycake, state where it is and how many acres.

Answer. He has 800 acres, which are described as follows: All of section 28 and the south half of the southwest quarter of section 21; the east half of the northeast quarter of section 29, in township 26 north, range 16 east, Indian meridian.

308 question. How have you been able to identify this land?

Answer. By being on the land and by the use of the Government map, as I have heretofore testified to.

309 question. I show you a paper, marked "Township No. 26 N.,

range No. 16 E., of Ind. mer.," and ask you if Mr. Journeycake's land appears thereon, and if so, how is it marked?

Answer. Yes; it appears thereon, and it is painted red.

310 question. E. M. Lorence, concerning whom you have just testified, does he possess any other land than that you have mentioned?

Answer. Yes, sir.

311 question. How many acres?

Answer. Eighty.

312 question. How is it described?

Answer. The south half of the northwest quarter of section 32, in township 26 north, range 16 east, Indian meridian.

313 question. Have you seen that land?

Answer. Yes, sir.

314 question. Does he claim it as his own; is it improved; is he in undisputed ownership of it?

Answer. Yes, sir; so far as I know he is.

315 question. How have you been able to identify that land?

Answer. By being on it and the use of the Government map, as I have heretofore testified to.

316 question. I show you a paper, marked "Township 26 N., range No. 16 E., Ind. mer.," and ask you if that land appears upon that paper, and if so, how it is marked?

Answer. Yes; it does appear upon that paper, and is marked in yellow lines.

(Said paper is placed in evidence and marked "Plaintiffs' Exhibit JJ.")

317 question. Do you know Jesse T. Miller?

Answer. I do.

318 question. What is he?

Answer. He is an adopted Delaware.

319 question. Has he a wife and some children?

Answer. Yes, sir; I do not know how many children.

320 question. Has he over two?

Answer. I do not know.

321 question. Have you seen two at a time?

356 Answer. I have seen one; I don't know how many he has; I have seen him have one child at a time.

322 question. Have you seen different children at different times?

Answer. I don't know. I know he has a wife and one child, for I have seen them.

323 question. Does he occupy any land?

Answer. Yes, sir.

324 question. How many acres?

Answer. Two pieces of land, described as follows: 160 acres, which is the southeast quarter of section 16, township No. 25 north, range 16 east, Indian meridian.

325 question. Have you seen that plot?

Answer. Yes, sir.

326 question. Have you been over it?

Answer. Yes, sir.

327 question. Is it improved; does he occupy it and claim it as his own?

Answer. Yes, sir.

328 question. How have you been able to identify it?

Answer. By being over it and the use of the Government map, as I have heretofore testified to.

329 question. What is the other plot that Mr. Miller occupies?

Answer. He has the west half of section 34 and the west half of the east half of section 34, in township No. 25 north, range No. 16 east, Indian meridian.

330 question. How many acres?

Answer. Four hundred and eighty.

331 question. Have you seen that land?

Answer. Yes, sir.

332 question. Does he occupy it, and has he improved it?

Answer. Yes, sir.

333 question. Does he claim it for his own?

Answer. Yes, sir.

334 question. Have you been over it?

Answer. Yes, sir.

335 question. How have you been able to identify it?

Answer. By being on the land and the use of the Government map, as I have heretofore testified to.

336 question. I show you a paper marked "Township No. 25 N., range No. 16 E., Ind. mer.," and ask you if these two plots of land of Mr. Miller's appear thereon?

Answer. Yes; they appear thereon, and are painted in pink.

337 question. Does Addie Lorence occupy any more land than you have testified to?

Answer. Yes, sir.

338 question. Where is it?

Answer. In township 25 north, range 16 east, Indian meridian, and it consists of the south half of section 29 and the north half of section 32; it is 640 acres.

339 question. Have you seen that land?

Answer. Yes, sir.

340 question. Have you been over it?

Answer. Yes, sir.

341 question. Is that land occupied by Mrs. Lorence herself?

357 Answer. She has a tenant on it.

342 question. Is it improved?

Answer. Yes, sir.

343 question. Does she claim it as her own? She has undisputed possession of it?

Answer. Yes, sir; so far as I know, she has.

344 question. How have you been able to identify this land?

Answer. By being on the land and with the use of Government map, as heretofore testified to.

345 question. I show you a paper marked "township No. 25 N.,

range No. 16 E., Ind. mer.," and ask you if the land appears upon that paper?

Answer. Yes; and is painted yellow.

346 question. Does Calvin Everett occupy any more land than you have already testified to?

Answer. Yes, sir; it is 160 acres; southeast quarter of section 33, township 25 north, range 16 east, Indian meridian.

347 question. Have you seen that land?

Answer. Yes, sir.

348 question. You have been over it?

Answer. Yes.

349 question. Does Mr. Everett occupy it and improve it?

Answer. Yes, sir.

350 question. Does he live on it?

Answer. He has a tenant on it.

351 question. Is he in undisputed possession of it?

Answer. So far as I know.

352 question. How have you been able to identify that land?

Answer. By being on the land and by the use of the Government map, as heretofore testified to.

353 question. I show you a paper, marked "Township No. 25 N., range No. 16 E., Ind. mer.," and ask you if the land appears upon that paper?

Answer. Yes, sir; and it is marked in green stripes.

354 question. Do you know J. E. Thomas?

Answer. Yes, sir.

355 question. What is he?

Answer. He is a Delaware Indian; he lives in the Cherokee nation, Ind. T.

356 question. Does he occupy any land there?

Answer. Yes, sir.

357 question. Have you seen it, and is it improved?

Answer. Yes, sir.

358 question. Does he claim it for his own—he is in undisputed possession of it?

Answer. Yes, sir.

359 question. Has he any family?

Answer. No, sir.

360 question. Have you identified the location of that land?

Answer. Yes, sir.

361 question. How?

Answer. By being on the land and the use of Government map, as I have heretofore testified to.

362 question. How many acres in that land?

358 Answer. Two hundred.

363 question. Where is it situated?

Answer. He has the south half of the southwest quarter of section 26, and the south half of the southeast quarter of section 27, and the northeast quarter of the northeast quarter of section 34, all in township 25 north, range 16 east, Indian meridian.

364 question. I show you a paper marked "Township No. 25 N., range No. 16 E., Ind. mer.," and ask you if that land appears thereon?

Answer. Yes; and it is painted blue.

365 question. Do you know Thomas Newcombe?

Answer. Yes, sir.

366 question. Where does he live; what is his nationality?

Answer. He is a Delaware Indian, living in the Cherokee nation, Ind. T.

367 question. Does he occupy land?

Answer. Yes, sir.

368 question. Is it improved, and does he live on it?

Answer. Yes, sir.

369 question. Does he claim it for his own and that of his family?

Answer. Yes, sir.

370 question. Has he got a family?

Answer. Yes, sir; a wife and one child.

371 question. Have you examined that land?

Answer. Yes, sir.

372 question. Have you been able to identify its location?

Answer. Yes, sir.

373 question. How?

Answer. By being on the land and the use of the Government map, as heretofore testified to.

374 question. How many acres in that land?

Answer. Four hundred. He has the north half of section 23 and the south half of the southeast quarter of section 14, all in township 25 north, range 16 east, Indian meridian.

375 question. I show you a paper and ask you if this land appears thereon. It is marked "Township No. 25 N., range No. 16 E. of Ind. mer."

Answer. Yes, and it is painted in green.

376 question. Do you know William Nichols?

Answer. Yes, sir.

377 question. Who is he?

Answer. He is a Delaware Indian, and has one child. He lives in the Cherokee nation, Ind. T.

378 question. Does he occupy any land?

Answer. Yes.

379 question. How long have you known this land?

Answer. For twenty-five years.

380 question. Is this land improved?

Answer. Yes, sir.

381 question. Have you been able to identify this land?

Answer. Yes, sir.

382 question. How?

Answer. By being over the land, and by the use of Government map, as heretofore testified to.

383 question. How many acres is that land?

359 Answer. 240. It is the south half of the southeast quarter of section 24 and the northeast quarter of section 25, all in township 25 north, range 16 east, Indian meridian.

384 question. I show you a paper marked "Township No. 25 N., range No. 16 E. of Ind. mer." and ask you if this land appears thereon.

Answer. Yes, and it is marked in pink stripes.

385 question. Do you know Tom Wilson?

Answer. Yes, sir.

386 question. State where he lives and what his nationality is.

Answer. He is a Delaware Indian; lives in Cherokee nation, Ind. T.

387 question. Has he any land there?

Answer. Yes, sir.

388 question. Does he occupy it, and is it improved?

Answer. Yes, sir.

389 question. Have you seen it—been over all of it?

Answer. Yes, sir.

390 question. Have you been able to identify this land?

Answer. Yes, sir.

391 question. How?

Answer. By being over it, and by the use of Government maps, as heretofore testified to.

392 question. How many acres?

Answer. 600.

393 question. How is it described?

Answer. As the northeast quarter of section 26, and the northwest quarter of the southeast quarter of section 26, and the southwest quarter of section 25, the west half of the southeast quarter of section 25, the northwest quarter of section 36, all in township 25 north, range 16 east, Indian meridian.

394 question. I show you a paper marked "Township No. 25 N., range No. 16 E., Ind. mer. ½," and ask you if this land appears thereon.

Answer. Yes; it is painted in very light green.

395 question. In addition to the land that you have already testified to as belonging to Mr. R. C. Adams, do you know of any more land that he has; and if so, how many acres, and where is it?

Answer. I know of another plot of land in township 25 north, range 16 east, Indian meridian, belonging to my brother, R. C. Adams, amounting to 160 acres, which is described as follows: The east half of the northeast quarter of section 35, the east half of the southeast quarter of section 26.

396 question. Have you been over that land?

Answer. Yes, sir.

397 question. Have you seen it?

Answer. Yes, sir.

398 question. Does your brother claim it as his own, and has he improved it?

Answer. Yes, sir.

399 question. I show you a paper marked "Township No. 25 N., range No. 16 E., Ind. mer.," and ask you if that land appears thereon?

Answer. Yes; and it is painted bright red.

400 question. Do you know Mrs. Rosa Bullette?

360 Answer. Yes, sir.

401 question. Is she a Delaware?

Answer. She is a Delaware Indian, living in Indian Territory, Cherokee nation.

402 question. Does she occupy any land?

Answer. Yes, sir.

403 question. Have you seen it—been over it?

Answer. Yes, sir.

404 question. Is it improved?

Answer. Yes, sir.

405 question. Does she live on it?

Answer. Yes, sir.

406 question. How have you been able to identify it?

Answer. By being over the land and the use of the Government map, as I have heretofore testified to.

407 question. You know its location by the use of that Government map?

Answer. Yes, sir.

408 question. Where is it located, and how many acres is it?

Answer. 360; located in township 25 north, range 16 east, Indian meridian, and is described as follows: Southwest quarter of section 36, southeast quarter of section 35, southwest quarter of the northeast quarter of section 35.

409 question. I show you a paper marked "Township No. 25 N., range No. 16 E., Ind. mer.," and ask you if that land appears thereon?

Answer. Yes, it does; and is painted Indian red.

(Said paper placed in evidence and marked "Plaintiffs' Exhibit K K.")

410 question. Do you know J. B. Heady?

Answer. Yes, sir.

411 question. Who is he?

Answer. He is a white man with a Delaware family. He has a wife and six or seven children.

412 question. Have you seen his land?

Answer. Yes, sir.

413 question. Does he occupy it and improve it?

Answer. He has tenants on it; it is well improved.

414 question. You have been over it and examined it?

Answer. Yes, sir.

415 question. Did you locate its correct position?

Answer. I think I have.

416 question. How?

Answer. By being on the land and the use of Government map, as heretofore testified to.

417 question. How many acres is that land, and where situated?

Answer. 953.16 acres, and situated in township 24 north, range 16 east, Indian meridian, and is described as follows: East half of section 7 and the northwest quarter of section 7, and east half and southwest quarter of section 6.

418 question. I show you a paper, marked "Township No. 24 N., range No. 16 E. of Ind. mer.," and ask you if Mr. Heady's land appears thereon?

Answer. Yes; and it is painted yellow.

419 question. Do you know Abner Adams?

Answer. Yes; he is my brother. He is a Delaware Indian; he lives in the Cherokee nation, Indian Territory.

361 420 question. Does he occupy any land?

Answer. He has 165.06 acres of land, which is situated in township 24 north, range 16 east, Indian meridian, and is described as follows: Northwest quarter of section 5.

421 question. How do you know that is his land?

Answer. I have been over it and examined it, and have examined its location by means of personal examination and by use of the Government map, as heretofore testified to.

452 question. Does Calvin Everett own any land in addition to that which you have testified to as belonging to him?

Answer. He has some in township 24 north, range 16 east, Indian meridian, consisting of 162.90 acres, which is described as follows: Northeast quarter of section 4.

453 question. Have you seen that land?

Answer. Yes, sir; I have seen the land and been over it.

454 question. How have you been able to identify its location?

Answer. By being over the land and by the use of Government map, as heretofore testified to.

455 question. I show you a paper marked "Township No. 24 N., range No. 16 E. of Ind. mer.," and ask you if Abner Adams' and Calvin Everett's land appear upon that paper?

Answer. Yes; Abner Adams' land is marked on that paper in red stripes and Everett's land is marked in solid brown.

456 question. Do you know Sarah Fields?

Answer. Yes, sir.

457 question. Is she a Delaware?

Answer. She is a Delaware Indian residing in the Cherokee nation, Indian Territory.

458 question. Does she occupy any land there?

Answer. Yes, sir.

459 question. Have you seen it—have you been over it?

Answer. Yes, sir.

460 question. Is it improved?

Answer. Yes, sir.

461 question. Does she claim it for her own?

Answer. Yes, sir.

462 question. Have you been able to identify its location?

Answer. Yes, sir.

463 question. How?

Answer. By being over the land and by the use of Government map, as I have heretofore testified to.

464 question. How many acres is that land, and where is it situated?

Answer. 1,218.28; situated in township 24 north, range 16 east, Indian meridian, and is described as follows: South half of section 4, the north half of section 9, the northwest quarter of section 10, the southwest quarter of section 3; lots 14, 13, and 15, in section 3; lots 2, 3, 4, 6, 7, and 8, in section 10; the northeast quarter of the southeast quarter of section 10, and lot 2 in section 11.

465 question. Does this tract, as described by lot numbers and section numbers, appear upon any map?

Answer. Yes, sir; it appears upon a certain map of township No. 24 north, range 16 east of Indian meridian, Indian Territory, on file in the office of the United States Geological Survey at Wash-
362 ington, dated March 2d, 1898, signed Chas. D. Walcott, director, on which the section numbers and lot numbers contained in my answer are duly set forth.

466 question. When you were over this land of Sarah Fields, did you use the map that you have referred to, in identifying that land?

Answer. Yes, sir.

467 question. How did you make use of that map as regards that land?

Answer. By going to the surveys and identifying the land marks and surveys on the land.

468 question. Did you make any memorandum on the map at the time?

Answer. Yes, sir; I marked it with pencil—blue pencil.

469 question. Did you identify the situation of the land by any monuments or marks?

Answer. Yes, sir.

470 question. And from those marks you made your memorandum on the map?

Answer. Yes, sir.

471 question. And that map, with your memorandum, is in your possession?

Answer. Yes, sir.

472 question. In addition to the land that you have already described as belonging to your brother, R. C. Adams, do you know of any other land in township 24 north, range 16 east, Indian meridian? If so, describe it.

Answer. Yes; I know of other land and I have gone over it and examined it and have located it by personal examination and the aid of the Government maps, as I have heretofore testified to, and, from my examination and location on the Government maps, I have computed this land at 767.98 acres, and it is described as follows

Lots 1, 2, 6, 7, and 8 in section 15; the south half of the northeast quarter, the southeast quarter, the northeast quarter of the southwest quarter, and the south half of the southwest quarter of section 15; the southwest quarter and the south half of the northwest quarter of section 14, and lots 3 and 5, section 16.

473 question. Does your brother, R. C. Adams, occupy and improve this land?

Answer. He has tenants on it.

474 question. Does he claim it as his own?

Answer. Yes, sir.

475 question. I show you a paper marked "Township No. 24 N., range No. 16 E., Ind. mer.," and ask you if Sarah Fields's land is marked on that paper and in what color?

Answer. Yes; and is marked in light pink.

476 question. Is R. C. Adams' land on that paper, and in what color?

Answer. Yes; in bright red.

477 question. I notice three plots of land marked on that paper in bright green, and ask you whose land that represents?

Answer. That is my land?

478 question. Do you occupy that land?

Answer. I have tenants on it.

479 question. Do you claim it as your own?

363 Answer. Yes; I have improved it.

480 question. Are the improvements on it yours, and you occupy it through your tenants?

Answer. Yes, sir.

481 question. Please describe those three plots of land, commencing with the first one of 240 acres.

Answer. The first one of 240 acres is described as follows: The southwest quarter of section 2, the southwest quarter of the northwest quarter of section 2, the northeast quarter of the northwest quarter of section 11, in township 24 north, range 16 east, Indian meridian.

482 question. Describe the plot of 840.00 acres.

Answer. That is the east half of section 14, the northeast quarter of section 23, the west half of the northwest quarter of section 24, the west half of the southwest quarter of section 13, and the northeast quarter of the southwest quarter of section 13 and the northwest quarter of section 13. This is in the aforesaid township and range.

483 question. Describe the section consisting of 95.35 acres.

Answer. That is the north half of the northwest quarter of section 22 and lot No. 1, section 21.

484 question. In addition to the land described as belonging to Henry Armstrong, is there another plot joining one of your plots?

Answer. Yes, sir.

485 question. It is a plot of 160 acres, is it not?

Answer. Yes, sir; and it appears upon the paper marked "Town-

ship No. 24 N., range 16 E., Ind. mer.," as a very pale green square, marked 160.

486 question. Did you examine that—go over it?

Answer. Yes, sir.

487 question. Does Mr. Armstrong live on it?

Answer. He has a tenant on it.

488 question. Has he improved it; did he put the improvements there?

Answer. Yes, sir.

489 question. Does he claim it as his own?

Answer. Yes, sir.

490 question. Did you locate this upon the governmental map as you have heretofore described?

Answer. Yes, sir.

491 question. Are you able to say how many acres that is, and how it is situated?

Answer. Yes; it consists of 160 acres, and is described as follows: South half of the northeast quarter of section 2, north half of the southeast quarter of section 2, in township 24 north, range 16 east, Indian meridian.

(Said paper is offered in evidence, marked "Plaintiffs' Exhibit L L.")

492 question. I show you a paper, marked "Township 23 N., range 16 E., Ind. mer.," upon which appear two squares marked in bright red, one of which has on it the figures "1880" and the other of which has on it the figures "39.33," and I ask you what this paper represents and what these red squares represent?

Answer. It represents the land of Mrs. L. E. Lane contained in ownship 23 north, range 16 east, Indian meridian.

493 question. Who is Mrs. L. E. Lane?

Answer. She is a Delaware Indian living in the Cherokee nation, Ind. T.

364 494 question. How are you able to locate her land as a part of this township?

Answer. By being on the land and by the assistance of the Government map, as I have heretofore testified to.

495 question. Please describe the location of that land?

Answer. The west half of section 28, the east half of section 29, the east half of the southwest quarter of section 29, the southeast quarter of the northwest quarter of section 29, the northwest quarter of section 33, the west half of the southwest quarter of section 33, all of section 32, the northeast quarter of section 31, the east half of the northwest quarter of section 31, the southwest quarter of the southwest quarter of section 30.

(This paper is offered in evidence and marked "Plaintiffs' Exhibit MM.")

496 question. Does Mrs. Lane live on that land?

Answer. Yes, sir.

497 question. Is it improved and does she claim it as her own?

Answer. Yes, sir.

498 question. I show you a paper, marked "Township No. 22 N., range No. 16 E., Ind. mer.," on which appear two plots marked in red, one of which is marked 79.92 and the other is marked 240, and I ask you what these plots represent?

Answer. They represent the additional land of Mrs. L. E. Lane.

499 question. Have you examined this additional land of Mrs. L. E. Lane?

Answer. Yes, sir.

500 question. Have you identified it by comparison with the Government map, ascertaining the boundaries and monuments as you have heretofore described?

Answer. Yes, sir.

501 question. Is the marking of these plots upon these maps the result of that comparison?

Answer. Yes, sir.

502 question. Take the first plat, marked 79.92, and describe its location.

Answer. It is the north half of the northwest quarter of section 5.

503 question. Take the one marked 240 and describe its location.

Answer. The south half of the southeast quarter of section 3, the northeast quarter of section 10; both of these are situated in township 22 north, range 16 east, Indian meridian.

504 question. Has Mrs. Lane improved this land and does she claim it for her own; she occupies it through her tenants, doesn't she?

Answer. Yes, sir.

(Received in evidence and marked "Plaintiffs' Exhibit NN.")

505 question. I show you a paper, marked "Township No. 27 N., range No. 15 E., Ind. mer.," on which appears one plat in red, marked 160, one plat in green, marked 520, one plat in a very faint greenish white, marked 160, one plat in yellow marked 160, one plat with green lines on it, marked 160, one plat with green lines on it, marked 40, one plat in Indian red, marked 200; please state what these plats represent; take first this one (indicating).

Answer. The one marked 160, in red, represents the land belonging to Adam Wilson, or part of it. It is the southeast quarter of section 33. The plat in green, marked 320, is land belonging
365 to Mary V. McClure; it is the south half of section 26. The plat painted in a faint greenish white, marked 160, represents the land belonging to William Alltime; it is the southwest quarter of section 25. The yellow plat, marked 160, represents the land of Frank Longbone, and is the northwest quarter of section 36. The plat painted in green lines, marked 160, is the land of Joseph Secondyne, and is the northeast quarter of section 36. The plat painted in green lines, marked 40, also belongs to Joseph Secondyne, and is the northeast quarter of the northwest quarter of section 36.

The plat painted in Indian red, marked 200, is the land belonging to John W. Stout, and is the southeast quarter of section 36, and the southeast quarter of the southwest quarter of section 36; all of this land is in township 27 north, range 15 east, Indian meridian.

506 question. The numbers on these plats represent what?

Answer. The number of acres.

507 question. Have you examined the lands belonging to each of these persons last named?

Answer. Yes, sir.

508 question. Did you go over them?

Answer. Yes, sir.

509 question. Do these parties occupy these lands; do they claim them as their own?

Answer. Yes, sir.

510 question. Are these lands improved?

Answer. Yes, sir.

511 question. How are you enabled to give the location of these lands as you have given them?

Answer. By being on the land and examining them by means of the monuments and marks and identifying them upon the Government maps, as heretofore testified to.

(Received in evidence and marked "Plaintiffs' Exhibit OO.")

512 question. I show you a paper marked "Township No. 26 N.' range No. 15 E., Ind. mer.," on which appears a plat marked in red with the number 1602.77, a plat marked in red with the number 640 upon it, a plat marked in red with the number 160 on it, a plat marked in red with the number 80 on it, a plat painted yellow with the number 800 on it, a plat painted yellow with the number 560 on it, a plat painted Indian red with the number 560 upon it, a plat painted light pink with the number 240 on it, a plat painted in blue stripes with the number 560 on it, a plat painted in solid green with the number 480.28 on it, a plat painted in green stripes with the number 160.12 on it, a plat painted in light pink with the number 320.04 on it, a plat painted solid blue with the number 40 on it, a plat painted a greenish white with the number 720 upon it. I ask you what the numbers on these plats represent?

Answer. Acres.

513 question. Take each plat and state whose land it represents.

Answer. Plat marked 1602.77, painted red, represents land of Adam Wilson; he is a New York Indian adopted by the Delaware Indians, living in the Cherokee nation, Indian Territory.

514 question. Have you seen that land?

Answer. Yes, sir.

515 question. Is it improved; does he occupy it; does he claim it as his own?

366 Answer. Yes, sir.

516 question. Describe the situation of that land.

Answer. The east half of section 4, the west half of section 3, the southeast quarter of section 3, the southwest quarter of section 2, the

east half of section 10, the northwest quarter of section 10, the northeast quarter of section 9, in township 26 north, range 15 east, Indian meridian. The plat painted red, marked 640, is also land of Adam Wilson, which I have identified in the same manner as the former land, and it is described as follows: East half of section 11, west half of section 12. Plat painted red, marked 160, is also land of Adam Wilson, and it is the southwest quarter of section 32.

517 question. Have you identified this in the same manner as you did the other plat?

Answer. Yes, sir.

520 question. Is this land improved and occupied by this man?

Answer. Yes, sir. The plat painted yellow with the figures 800 on it represents the land of John W. Stout and is situated in the southeast quarter of section 27, the southwest quarter of section 26, the northeast quarter of section 34, the north half of section 35.

521 question. How are you able to identify this land as so situated and as being the land of Mr. Stout?

Answer. By being on it and seeing the Government monuments and the use of the Government map, as I have heretofore testified to, and because Mr. Stout is in possession of it.

522 question. He has improved it, has tenants on it, and claims it for his own?

Answer. Yes, sir. The plat painted solid brown, marked 560, represents additional land of John W. Stout, and is the north half of section 27, the southwest quarter of section 27, the west half of the northwest quarter of section 26. He is in possession of the land by tenants. I have been on the land and have been able to identify it by the metes and boundaries and by the use of a Government map, as I have heretofore testified to. The plat painted light pink, marked 240, represents the additional land of Simon Secondine; it is the northeast quarter of section 16, the south half of the southeast quarter of section 9. It is in the possession of Simon Secondine by tenant. He claims it as his own. I have seen the land, been on it, and been able to identify it by the monuments on said land and by the use of the Government map, as I have heretofore testified. The plat painted with blue stripes and marked 560 represents the land of Joseph Brown; he is a Delaware Indian. It is described as the southwest quarter of section 10, the north half of section 15, the north half of the southeast quarter of section 15. He occupies the land and lives on it. I have been on the land and identified it by the Government monuments and by the use of the Government map, as I have heretofore testified to. The plat painted solid yellow and marked 560 represents additional land of John W. Stout, and is described as follows: The west half of section 11, the northwest quarter of section 14, the west half of the northeast quarter of section 14. He is in possession of it; he lives there; it is his home. I have been on the land and identified it by the Government monuments and Government map, as I have heretofore testified to.

The plat painted a pale greenish white and marked 400 represents land of Lilly Smith, a Delaware Indian, who is in possession

of it. It is all of west half of section 13 and the east half of
367 the northeast quarter of section 14. I have been on the land and identified it by the monuments and use of the Government map, as I have heretofore testified.

The plat painted a solid green and marked 480.28 represents the land of Mary C. Beyzian; it is the east half of section 2 and the southwest fourth of section 1. It is her home place, where she lives. I have been on the land and identified it by the monuments and use of the Government map, as I have heretofore testified to.

The plat painted with green stripes and marked 160.12 is the land of Solomon Armstrong, a Delaware Indian, living in the Cherokee nation. It is the northwest quarter of section 1. I have been on the land. He occupies and lives on it. I have identified it by the use of the monuments and the Government map, as I have heretofore testified to.

The plat painted pale pink, marked 320.04, represents additional land of Simon Secondine, and is his home place. I have been on the land and have identified it by the Government monuments and by the use of the Government map, as I have heretofore testified to. It is the east half of section 1.

The plat painted solid blue, marked 40, is additional land of Stephen Miller. I have been on the land and identified it. It is a part of his home place, where he lives. I have identified it by the monuments and the use of the Government map.

523 question. All of this land which you have testified to as being represented by these painted plats, concerning which I questioned you as appearing on a paper marked "Township No. 26 N., range No. 15 E., Ind. mer.." describe land all situated in that township and in that range, do they not?

Answer. Yes, sir.

(Offered in evidence and marked "Plaintiffs' Exhibit PP.")

524 question. The people whom you have testified to as owning this land are all Delaware Indians and reside in Indian Territory, Cherokee nation?

Answer. Yes, sir.

529 question. This paper I show you, which is marked "Township No. 25 N., range No. 15 E., Ind. mer.," does that contain an accurate map of that land?

Answer. Yes, sir.

(Offered in evidence and marked "Plaintiffs' Exhibit QQ.")

530 question. You possess some additional land in township 24 north, range 14 east, Indian meridian?

Answer. Yes, sir.

531 question. Have you made an accurate map of that land?

Answer. Yes, sir.

532 question. Did you identify the location of that land as you have identified other locations, as you have testified?

Answer. Yes, sir.

533 question. I show you a paper marked "Township 24 N., range 14 E., Ind. mer.," and ask you if that paper contains an accurate map of that land?

Answer. Yes, sir.

534 question. Please state the location of that land.

Answer. The southeast quarter of section 11 and the west half of section 12, the northeast quarter of section 12, the north half
368 of the southeast quarter of section 12, and the north half of the northwest quarter of section 13.

535 question. How many acres is that?

Answer. Eight hundred acres.

(Offered in evidence and marked "Plaintiffs' Exhibit RR.")

536 question. Do you know of an additional plot of 240 acres which belongs to your brother, R. C. Adams, situated in township 23 N., range 14 E., Ind. mer.?

Answer. Yes, sir.

537 question. I show you a paper so marked and ask you if it appears thereon?

Answer. Yes, sir.

(Said paper is offered in evidence and marked "Plaintiffs' Exhibit SS.")

538 question. Please describe the location of that land.

Answer. The northeast quarter of section 24, the east half of southeast quarter of section 13.

539 question. Have you been over this land?

Answer. Yes, sir.

540 question. Does your brother occupy it?

Answer. He has tenants on it; he occupies it through his tenants.

541 question. Is it improved?

Answer. Yes, sir.

542 question. Does he claim it as his own?

Answer. Yes, sir.

543 question. Have you identified the position of it by means of the Government monuments and Government maps, as you have heretofore testified to?

Answer. Yes, sir.

544 question. I show you a paper marked "Township No. 28 N., range No. 19 E., Ind. mer." Does that paper contain plats of certain lands?

Answer. Yes, sir.

545 question. Have you been over each plat of land?

Answer. Yes, sir.

546 question. Have you examined it with regard to the boundaries and the Government monuments on said land?

Answer. Yes, sir.

547 question. And what have you done toward identifying the location of that land upon the maps?

Answer. I went to the monuments and located by the use of the Government map, in the manner which I have before testified to.

548 question. This land is upon this paper in red, yellow, and green plats, is it not?

Answer. Yes, sir.

549 question. And the numbers that appear upon each plat represent what?

Answer. The number of acres in each.

550 question. Is that true with regard to every plat that has gone in evidence?

Answer. Yes, sir.

551 question. Who owns the land represented by green plat, marked 547.34?

Answer. Henry Wolf, a Delaware Indian, living in the Cherokee nation.

369 552 question. Describe the location of that plat?

Answer. He has the south half of the northeast quarter of section 3 and the southeast quarter of the northwest quarter of section 3, the southeast quarter of section 3, the east half of the southwest quarter of section 3, and the southwest quarter of section 2.

553 question. Has he improved this land, and does he claim it as his own?

Answer. Yes, sir.

554 question. Who owns the green plat marked 258.44?

Answer. Henry Wolf owns it, and it is described as follows: The southeast quarter of section 1, the south half of the northeast quarter of section 1. He occupies it, claims it as his own, and has improvements on it.

555 question. Who owns the green plat marked 320?

Answer. Henry Wolf. He occupies it through a tenant, and claims it as his own. It is the south half of section 26.

556 question. Who owns the yellow plat marked 800?

Answer. L. W. Barker; and it is described as follows: Southwest quarter of section 13, the east half of section 14, northwest quarter of section 14, the east half of the southeast quarter of section 14, the north half of the northeast quarter of section 23. He occupies it, has improvements on it, and claims it for his own.

557 question. Who owns the yellow plat marked 640?

Answer. L. W. Barker. It is the south half of section 23 and the north half of section 26. He occupies and owns it and claims it as his own; has it improved.

558 question. Who owns the red plat marked 480?

Answer. Rachael Anderson, a Delaware Indian; and it is described as follows: The northwest quarter of section 12, the northeast quarter of section 11, the south half of the southeast quarter of section 2, the south half of the southwest quarter of section 1. She occupies it and claims it as her own.

(The paper referred to, marked "Township No. 28 N., range No. 19 E. of Ind. mer.," offered in evidence and marked "Plaintiffs' Exhibit TT.")

559 question. I show you a paper marked "Township No. 29 N., range No. 19 E., Ind. mer.," on which there are plats painted in green, red, and Indian red, on which appear certain figures. What do these plats represent?

Answer. They represent certain land.

560 question. Have you seen and examined this land?

Answer. Yes, sir.

561 question. How have you identified the location of it?

Answer. By being on the land and by the Government monuments, and the use of the Government maps.

562 question. What do the figures upon these plats represent?

Answer. The number of acres.

563 question. Take the green plat marked 400, describe its location, and to whom it belongs.

Answer. It belongs to Henry Wolf, a Delaware Indian; it is the south half of section 33, the east half of the southeast quarter of section 32. He has improvements on it and is in possession of it; he claims it for his own.

The red plat marked 640 belongs to Rachael Anderson, a
370 Delaware Indian. She has improvements on it, and claims it for her own, and lives on it. It is all of section 36.

The Indian red plat marked 320 is the land of Rachael Wilkins, a Delaware Indian. It is the south half of section 25. She occupies it, has improvements on it, and claims it for her own.

(Offered in evidence and marked "Plaintiffs' Exhibit UU.")

564 question. I show you a paper marked "Township No. 28 N., range 20 E. of Ind. mer.," on which appear two plats, one in Indian red and the other in bright red, and ask you what these plats represent?

Answer. They represent land of Delaware Indians.

565 question. Have you examined this land?

Answer. Yes, sir.

566 question. And have you been over it?

Answer. Yes, sir.

567 question. How have you located its correct position?

Answer. By the monuments and use of the Government map, as heretofore testified to.

568 question. The numbers which appear upon this plat represent what?

Answer. The number of acres.

569 question. The plat in Indian red, marked 327.26, represents whose land?

Answer. The land of Rachael Anderson. It is the southeast quarter of section 6 and the south half of the north half of section 6.

570 question. The plat in bright red, marked 394.56; whose land is that, and how is it described?

Answer. It is the land of Charles C. Anderson, a Delaware Indian, who occupies it and lives on it. It is the southwest quarter of sec-

tion 6, the northwest quarter of section 7, the north half of the northeast quarter of section 7.

571 question. Do the parties whom you have mentioned live upon their land? Do they have improvements on it and claim it as their own?

Answer. Yes, sir.

572 question. They are in undisputed possession of it?

Answer. So far as I know.

(Offered in evidence and marked "Plaintiffs' Exhibit VV.")

573 question. I show you a paper marked "Township No. 24 N., range No. 21 E., Ind. mer." on which appear plats with numbers on them, marked in red, yellow, brownish white, green, Indian red, green lines and pink lines, and ask you what these colored plats represent and what the numbers on them represent?

Answer. The colored plats represent the land occupied by Delaware Indians, and the numbers are the number of acres in each plat.

574 question. Have you examined the land represented by each plat?

Answer. Yes, sir.

575 question. How have you located their exact position?

Answer. By the use of the Government map and by the aid of the Government monuments, as heretofore testified to.

576 question. Are these lands represented by these plats occupied and improved?

Answer. They are occupied and improved by Delaware Indians.

577 question. Do the people claim ownership to the plats as you describe them?

371 Answer. Yes, sir.

578 question. And, so far as you know, the claim of ownership is not disputed?

Answer. Yes, sir.

579 question. Take up the plat painted in bright red and marked 1040; tell who claims ownership to that plat as you have described, and the situation of the plat.

Answer. John D. Marker; it is the southwest quarter of section 9, the southeast quarter of section 8, northeast quarter of section 17, the east half of the southeast quarter of section 17, the west half of section 16, the northeast quarter of section 16.

580 question. Take the plat marked 320, painted bright yellow, and tell who claims ownership to that as you have described, and the situation of that plat.

Answer. Thomas E. Ketchum, a Delaware Indian. It is the southeast quarter of section 16, the west half of the southwest quarter of section 15, the south half of the northwest quarter of section 15.

581 question. Take the plat in brownish white, marked 360, and tell who claims ownership to that one as you have described, and give a description of the land.

Answer. Hester A. Hawkins, a Delaware Indian. It is the southeast quarter of section 15 and the east half of the southwest quarter of section 15, the north half of the northeast quarter of section 22, the northeast quarter of the northwest quarter of section 22.

582 question. Take the plat marked in solid green with the numbers 320 on it and state who has any evidence of ownership as you have described, and the situation of the plat?

Answer. Lizzie Lumbard, a Delaware Indian. It is the south half of section 22.

583 question. Who owns the green plat marked 160; where is it situated and who has evidence of ownership as you have described?

Answer. Lizzie Lumbard, also. It is the southeast quarter of section 36.

584 question. Who has evidence of ownership, as you have described, to the brown plat marked 520, and where is that situated?

Answer. Alice J. Lynch, a Delaware Indian. It is the south half of section 26, the east half of the southeast quarter of section 27, the northwest quarter of section 35, the west half of the northeast quarter of section 35, the northwest quarter of the southeast quarter of section 35, the northeast quarter of the southwest quarter of section 35.

585 question. Take the plat painted in green stripes, and marked 240, and state who has evidence of ownership in the manner which you have heretofore described, and where that plat is situated.

Answer. The land is owned by Rosa Conner, a Delaware Indian. It is the east half of the northeast quarter of section 35, the west half of the northwest quarter of section 36, the south half of the southwest quarter of section 25.

586 question. The plat marked in pink stripes with the figures 80 on it; state who has evidence of ownership in the manner which you have heretofore described, and where that is situated.

Answer. That is owned by Sarah A. McCamish, a Delaware Indian. It is the east half of the northeast quarter of section 25.

372 587 question. These plats that you have testified to, which appear by my question to be on paper marked "Township 24 N., range 21 E., Ind. mer." are situated, are they not, in that township and that range?

Answer. Yes, sir.

(Offered in evidence and marked "Plaintiffs' Exhibit WW.")

588 question. I show you a paper marked "Township 24 N., range 22 E., Ind. mer." on which appear two plats marked in red, and on which plats are certain figures. I ask you what these plats represent and what those figures represent?

Answer. The plats represent land in the possession of Delaware Indians, and the numbers represent the number of acres, in township No. 24 N., range No. 22 E., Ind. mer.

589 question. Take the red plat, marked 132.64, and state who claims ownership to that land.

Answer. That is additional land of Sarah A. McCamish. It is the west half of the west half of section 30.

590 question. Have you been over that land?

Answer. Yes, sir.

591 question. And how have you identified its location?

Answer. By the monuments and use of the Government maps, as heretofore testified to.

592 question. You examined the boundaries of it, and Sarah McCamish claims ownership of it, occupies it, and has improved it?

Answer. Yes, sir.

593 question. Is living on it? So far as you know, no one disputes her ownership?

Answer. Yes, sir.

594 question. Who occupies the plat represented by 148.20?

Answer. Sarah A. McCamish.

595 question. Have you been over that land?

Answer. Yes, sir.

596 question. How do you identify its location?

Answer. By the Government monuments and the use of the Government map, as heretofore testified to.

597 question. State how it is located?

Answer. In the southwest quarter of section 31.

(The paper in question is offered in evidence and marked "Plaintiffs' Exhibit XX.")

598 question. I show you a paper marked "Township No. 23 N., range 15 E., Ind. mer.", on which appears a plat in red and a plat in yellow. What do these plats represent?

Answer. The land belonging to Delaware Indians situated in said township and range.

599 question. And the numbers upon these plats represent what?

Answer. The number of acres contained.

600 question. Have you examined the land which you say these plats represent?

Answer. Yes, sir.

601 question. How have you identified its location?

Answer. By the Government monuments and the use of the Government maps, as heretofore testified to.

602 question. The location is accurately set out upon this paper?

Answer. Yes, sir.

603 question. The people who claim to own these lands—is their possession disputed, so far as you know?

Answer. No, sir.

373 604 question. They have put improvements upon them?

Answer. Yes, sir.

605 question. And they are in possession of them?

Answer. Yes, sir.

606 question. Who is in possession of the land represented by the red plat with the numbers 324.40?

Answer. That is additional land of R. C. Adams.

607 question. Who claims ownership to the yellow plat marked 806?

Answer. L. E. Lane.

608 question. Please describe this yellow plat.

Answer. The southwest quarter of the northeast quarter, the southeast quarter, lots 9, 12, and 13, and the southeast quarter of the southwest quarter, section 25; the northeast quarter, the east half of the northwest quarter, lots 1 and 4, the southeast quarter and the northeast quarter of the southwest quarter, section 36.

(This paper is offered in evidence and marked "Plaintiffs' Exhibit YY.")

609 *question. I show you a* paper marked "Township No. 24 N., range No. 20 E., Ind. mer.," on which appears a plat marked in red, and I ask you what does that plat represent?

Answer. It represents land belonging to Delaware Indians.

610 question. Have you examined that land?

Answer. Yes, sir.

611 question. How have you been able to identify its location?

Answer. By the monuments and use of the Government map, as I have heretofore testified to.

612 question. This land is correctly set forth upon this plat?

Answer. Yes, sir.

613 question. It is situated in township 24 north, range 20 east, Indian meridian?

Answer. Yes, sir.

614 question. Who claims ownership to that land?

Answer. Frances Brown.

615 question. Does she occupy it; has she improved it; so far as you know, her claims to it are undisputed?

Answer. Yes, sir.

616 question. Please describe the location of that land.

Answer. The northeast quarter, the northeast quarter of the northwest quarter to Missouri, Kansas and Texas railway, the southeast quarter of the northwest quarter to said railroad on the east, lot 3 on the east to said railroad, the northeast quarter of the southwest quarter, the south half of the southwest quarter, section 19, and the northwest quarter of section 30.

(Said paper is offered in evidence and marked "Plaintiffs' Exhibit ZZ.")

617 question. Speaking with regard to all of the exhibits that go on the record to-day, marked "BB" to "ZZ," inclusive, they represent lands owned by Delaware Indians, do they not?

Answer. Yes, sir.

618 question. I understand you to say that you have personally examined each piece of land that you have to-day testified to?

Answer. Yes, sir.

619 question. How were you enabled to make these maps repre-

sented by these exhibits and set forth upon them accurately the land to which each plat is supposed to refer?

374 Answer. By use of the Government maps.

620 question. When you examined these lands, did you make any memorandum of their location?

Answer. Yes, sir.

621 question. Written memorandum?

Answer. Yes, sir; I got the written memorandum of each location.

622 question. As ascertained in connection with the Government map?

Answer. Yes, sir.

623 question. And have you this written memorandum?

Answer. Yes, sir.

624 question. When you prepared these exhibits that were put in evidence to-day, did you make any use of that written memorandum?

Answer. Yes, sir; we used the written memorandum and the Government map.

625 question. These exhibits to-day represent the pictorial result of that written memorandum; is that true?

Answer. Yes, sir.

626 question. Who assisted you in preparing these exhibits?

Answer. Mr. Frerett.

627 question. What did he do with regard to these exhibits?

Answer. He went over the exhibits with me and painted the colors upon them.

628 question. Did you direct him where to paint them and what colors to picture?

Answer. Yes, sir.

629 question. And these directions that you gave him were taken from your memorandum?

Answer. Were taken from my memorandum.

630 question. And these memoranda that you refer to were made in Indian Territory?

Answer. Yes, sir.

631 question. And these memoranda were the result of your examination of these lands and monuments, assisted by the Government maps, to which you have testified?

Answer. Yes, sir.

HORACE M. ADAMS.

It is stipulated between counsel that the witness may be again put upon the stand and his testimony continued; and the cross-examination of the witness is not waived, but it is expressly stipulated and agreed that it is hereby adjourned until such time as the witness again takes the stand.

I, Harry H. Hollander, a notary public in and for the District of Columbia, certify that at the time and place aforesaid Horace M. Adams, a witness on behalf of the plaintiffs in the above-entitled cause, was by me sworn before any question was put to him to tell

the truth, the whole truth, and nothing but the truth relative to the said cause; and that the answers were taken down in my presence and his deposition as above set forth was read over to and signed by him before me at the time and place aforesaid.

In witness whereof I have hereunto set my hand and official seal this 20th day of December, A. D. 1900.

HARRY H. HOLLANDER,
[SEAL.] *Notary Public.*

375 Continuation of the deposition of Horace M. Adams, a witness produced, sworn, and examined at the hour of 2.10 p. m. on the 29th day of December, 1900, at Washington, D. C., before the undersigned notary public in and for the District of Columbia, in the above-entitled cause.

Present on behalf of complainants: M. E. Harby, Esq., of counsel.
Present on behalf of defendants: John J. Hemphill, Esq., of counsel.

And thereupon said HORACE M. ADAMS was examined by counsel for complainants, and testified as follows in answer to interrogatories:

(Counsel for the defendants objected to all the testimony on the part of Mr. Adams in this case going to show the location of the lands occupied by the Delaware Indians, as also all testimony relating to the cultivation, improvement, and holding of said lands, or any of them, by said Delaware Indians, on the ground that it is incompetent and irrelevant and as not being within the jurisdiction conferred upon the Court of Claims by the act of Congress under which this case is brought.

It is understood and agreed by and between the counsel for the respective parties that this shall relate to all the testimony of Mr. Adams upon these points, and that the objection need not again be repeated.)

By Mr. HARBY:

632 question. Mr. Adams, how long have you resided in the Cherokee nation?

Answer. About thirty-two years, I think.

633 question. Are you acquainted with the system of Government survey of the land in the Indian Territory?

Answer. Yes, sir.

634 question. Will you describe the manner in which the land is physically marked?

Answer. It is marked by townships, ranges, and sections, and the section corners are marked by Government corner stones on every corner of a section.

635 question. Are these corner stones lettered or figured?

Answer. They have marks indicating the number of miles from

the township line; when it is timber land, they have letters on the witness trees.

636 question. In addition to these corner stones, what other physical marks are there in the way of monuments?

Answer. There are iron posts at the corner of each township.

637 question. And are these marked or lettered?

Answer. Yes, sir; they tell you the township and range that the post is in.

638 question. Besides the witness trees and iron posts and corner stones, are there any other evidences of subdivisions put up by the Government?

Answer. The quarter stones every half mile around the section.

639 question. That is all, is it?

Answer. Yes, sir.

640 question. Since you testified here last have you been in the Indian Territory?

Answer. Yes, sir.

641 question. And what did you do there this time?

376 Answer. I got the location of the lands.

642 question. Will you give the names of the people whose lands you located, giving at the same time the number of the township north and the number of the range east and the number of acres?

Answer. I located in township 20 north, range 12 east, 760 acres for George Bullette; township 21 north, range 12 east, 160 acres for George Bullette.

Township 22 north, range 12 east, 480 acres for Mrs. Washington; 240 acres for Mary Barnette; 400 acres for William Thomas.

Township 23 north, range 12 east, 320.21 acres for Oh-lut-whe-now-a-qua.

Township 24 north, range 12 east, 560 acres for William McEwin.

COUNSEL FOR DEFENDANTS: I think I will have to object to this.

By Mr. HEMPHILL:

Question. When was this list made up?

Answer. It was made up here from notes or from the list I made while on the ground.

Question. Where is the original?

Answer. It is here.

Question. How did you make the original up?

Answer. From maps—from the Government township maps, and being on the ground, seeing the corner stones, and taking my notes on small maps and making a list of the names separately in each township.

Question. Did you have any map with you when you went around all over this ground?

Answer. Yes, sir; I had the Government township maps.

Question. Do you claim to have gone to the corner stone of each one of these subdivisions of land?

Answer. Yes, sir.

Question. Every one of them?

Answer. Yes, sir.

Question. Did you make any memorandum at the time?

Answer. Yes, sir.

Question. Where is that memorandum?

Answer. I have my memorandum—part of it on the township maps and part of it—in fact, I have it all here.

(Counsel for defendants objects to the witness testifying from a copy of a paper of which he has the original, on the ground that it is incompetent for the witness to testify from a copy or from a paper made up subsequent to the date of the original entries.)

By Mr. HARBY:

643 question. Mr. Adams, you are at present testifying with regard to the names of those people who occupy land in Indian Territory, from a written list, are you not; and that written list was prepared under whose supervision?

Answer. Under my supervision.

644 question. From what?

Answer. From a written list that I made while on the ground.

645 question. These notes that you made, this memorandum, is in what shape; what do they consist of?

Answer. They are simply township plats and field notes describing the location of the land that I was on in each township.

377 646 question. And about how many different plats and memoranda or field notes are comprised in the work that makes up the list of these names that you are now testifying from?

Answer. There are 58 plats.

647 question. This list, then, is a condensed summary of these 58 different plats and field notes?

Answer. Yes, sir.

648 question. How long did it take you to condense into the list you are testifying from the memoranda contained in these 58 plats?

Answer. We were about three weeks making the whole thing.

649 question. Have you compared the list you are now testifying from with the records contained upon the various plats and field notes and memoranda that you made?

Answer. Yes, sir.

650 question. Is it a correct copy?

Answer. Yes, sir.

By Mr. HEMPHILL:

Question. Is that in typewriting you are now reading from?

Answer. Yes, sir.

Question. Are you a typewriter?

Answer. No, sir.

Question. You didn't make that?
Answer. I didn't write it; no, sir.
Question. That is a condensation, you say, of a large number of other memoranda you made in the Territory?
Answer. Yes, sir.
Question. Who else helped you to get that up?
Answer. Miss Talliafero.
Question. And who else?
Answer. She and myself; she is the only one that helped me.

By Mr. HARBY:

651 question. She did the typewriting?
Answer. Yes, sir.
652 question. You showed her what to do?
Answer. Yes, sir.

(Counsel for defendants objects to the testimony of the witness as incompetent unless the witness could testify from memoranda made in that way.)

By Mr. HARBY:

653 question. Will you now continue giving me a list of the people whose land you visited, giving at the same time the township north and range east, with the number of acres?
Answer. I will now continue my answer:
Township 25 north, range 12 east, 200 acres for Matilda Halfmoon; 160 acres for Pa-tah-a-coh-o.
Township 26 north, range 12 east, 320.12 acres for John Hallett; 260 acres for William Johnson; 80 acres for Jane Wheeler; 240 acres for Mary Anson; 80 acres for Josie Anderson; 400 acres for Pat-tah-a-coh-o; 160 acres for Joe Wagon; 160 acres for Mrs. Andrew Miller.
Township 27 north, range 12 east, 240.85 acres for John Young; 242.19 acres for Frenchman; 880 acres for John Yellowjacket; 160 acres for Mrs. Halfmoon; 160 acres for Henry Armstrong, Jr.;
378 320 acres for Widow Bill Swannock; 320 acres for Jonas Swannock; 640 acres for Jane Requa.
Township 28 north, range 12 east, 80 acres for Mary Lee; 320 acres for Martha Swannock; 481.02 acres for Lenno; 554.16 acres for Frenchman; 752.85 acres for Frank Frenchman; 480 acres for William Wilson; 160 acres for Tom Buffalo; 320 acres for James Wilson; 160 acres for Mrs. Nancy Wilson; 400 acres for John Young.
Township 29 north, range 12 east, 1009.25 acres for R. C. Adams.
Township 20 north, range 13 east, 212.39 acres for George Bullette; 720 acres for John Bullette.
Township 21 north, range 13 east, 799.76 acres for Mary Spybuck; 477 acres for James Walker; 180 acres for R. C. Adams; 79.96 acres for John Walker.
Township 22 north, range 13 east, 145.12 acres for William

Thomas; 72.28 acres for Mrs. Washington; 460.43 acres for R. C. Adams.

Township 23 north, range 13 east, 440 acres for R. C. Adams.

Township 24 north, range 13 east, 640 acres for Mrs. Jim Cæsar; 66.97 acres for Wm. McEwin; 160 acres for Geo. Wilson.

Township 25 north, range 13 east, 159.85 acres for John Jackson; 320 acres for Joseph Brown; 880 acres for Lizzie Bixley; 320 acres for Silas Miller; 720 acres for John Sarcoxie; 360.27 acres for Mary B. Sarcoxie; 240 acres for Reuben Sarcoxie; 720 acres for John Brown; 640 acres for Robert Wheeler; 240 acres for John Marshall; 80 acres for Lizzie Beaver; 520 acres for Lun-set-tah-o; 160 acres for Bettie Dunn; 560.07 acres for Pat-tah-a-coh-o; 799.99 acres for Fielding Halfmoon; 320 acres for Lizzie Halfmoon; 400 acres for Mrs. Andrew Miller; 320 acres for Wm. Johnson; 400.32 acres for Julia Bronson.

Township 26 north, range 13 east, 160 acres for John Marshall; 800 acres for John Hallett; 480 acres for Mary B. Sarcoxie; 440 acres for Henry B. Sarcoxie; 160 acres for Matilda Halfmoon; 160 acres for Fielding Halfmoon; 760 acres for J. J. Rice; 560 acres for Jefferson D. Sarcoxie; 980 acres for James Wilson; 160 acres for Harry Arnold; 640 acres for Jonas Swannock; 40.77 acres for Mrs. Andrew Miller; 502.25 acres for Nellie Knipe; 164.68 acres for Patah-at-coh-o; 720 acres for James Day; 404.21 acres for Wm. Johnson; 240 acres for Anna Paradee; 160 acres for Robert Whiteturkey; 243.15 acres for Jane Wheeler; 480 acres for Widow Whiteturkey; 150 acres for Albert Whiteturkey; 160 acres for Sam Whiteturkey; 725.68 acres for Arthur Armstrong.

Township 27 north, range 13 east, 1,360 acres for W. H. Shailer; 1,000 acres for Sam Williams; 489.56 acres for Arthur Armstrong; 480 acres for Eugene White; 640 acres for Wha-ho-na; 560 acres for John Kinney; 480 acres for Henry and Lilly Peterson; 722.83 acres for Wm. McEwin; 802.55 acres for Mrs. Billy Wilson; 605.57 acres for Sophia Buffalo; 440 acres for Mary Caps; 400 acres for Mrs. Blackwing; 200 acres for Mrs. Ice Wilson; 280 acres for Winda-a-la-qua; 162 acres for Wm. Beaver; 320 acres for Josie Buffalo; 80 acres for Tom Buffalo; 232.84 acres for Mary Delaware; 560 acres for Wm. Brown; 120 acres for She-ke-now-o-qua; 524.65 acres for Henry Armstrong, Jr.; 240 acres for Frank Overlees; 364.03 acres for Dutch Whiteturkey; 200 acres for Robert Whiteturkey; 420 acres for Mrs. Sam Williams; 160 acres for Soldier's wife; 120 acres for A. H. Norwood.

Township 28 north, range 13 east, 924.77 acres for Ah-pah-
379 me-now-oqua; 960 acres for J. W. Gibson; 1,440 acres for J. B. Parker; 1,280 acres for Charles Elkhair; 1,360 acres for Eliza Elkhair; 805.19 acres for Geo. Washington; 160 acres for Wm. McEwin; 400 acres for Stephen Bezian; 480 acres for Sophia Buffalo; 160 acres for James Wilson; 163.32 acres for Pa-mah-le-ma; 160.84 acres for John Young; 43.39 acres for Wm. and Lilly Wilson; 167.51 acres for Martha Swannock; 577.48 acres for Mary Lee; 715.34 acres for Alex Black; 1,240 acres for John Parks; 115.39

acres for Mrs. Sam Williams; 120 acres for Jane Falleaf; 856.43 acres for Col. Jackson; 160 acres for Mrs. Joe Halfmoon; 320 acres for Charlie Machine.

Township 29 north, range 13 east, 479.57 acres for Sam Williams; 720 acres for Col. Jackson; 720 acres for Ah-ph-me-now-o-qua; 240 acres for Mrs. Joe Halfmoon; 160 acres for Geo. Falleaf; 3,055.23 acres for R. C. Adams.

Township 22 north, range 14 east, 723.82 acres for R. C. Adams; 240 acres for John Bullette.

Township 23 north, range 14 east, 440 acres for R. C. Adams.

Township 25 north, range 14 east, 798.26 acres for Daniel Anderson; 480 acres for Arthur Armstrong; 519.28 acres for Edgar Halfmoon; 560 acres for Simon Secondine.

Township 26 north, range 14 east, 640 acres for Andrew Miller; 1,120 acres for John R. Willey; 400 acres for James Thompson; 480 acres for S. A. Miller; 1,240 acres for Albert Curleyhead; 463.92 acres for John Sarcoxie; 440 acres for Wm. Easy; 400 acres for Lizzie Marshall.

Township 27 north, range 14 east, 1,252.41 acres for Wm. McEwin; 1,280.41 acres for Mrs. Soldier; 320 acres for Soldier; 160 acres for John Yellowjacket; 200 acres for R. C. Adams; 1,280 acres for Carrie V. Overlees; 320 acres for Nancy Hildebrand; 160 acres for James Thompson; 578.47 acres for Win-da-a-la-a-qua; 293.88 acres for Wha-ho-na; 440 acres for Mrs. Ice Wilson; 308.19 acres for Sam Whiteturkey; 67.27 acres for Mrs. Blackwing.

Township 28 north, range 14 east, 1,450 acres for R. C. Adams; 762.62 acres for Geo. Falleaf; 560 acres for Lizzie Beaver; 168.33 acres for Jane Falleaf; 312.20 acres for John Parks, 224.06 acres for Wm. McEwin; 640 acres for John Young; 160 acres for Ellen Young; 480 acres for Mrs. Soldier.

Township 29 north, range 14 east, 319.86 acres for Geo. Falleaf.

Township 25 north, range 15 east, 640 acres for Sally O. Smith; 1,043.75 acres for R. C. Adams.

Township 26 north, range 15 east, 160 acres for Simon Secondine; 600 acres for Abraham Ketchum; 320 acres for R. C. Adams.

Township 27 north, range 15 east, 320 acres for Solomon Armstrong; 160 acres for Jacob Secondine; 160 acres for Joseph Secondine; 160 acres for Anderson Secondine; 220 acres for George Smith; 356.22 acres for R. C. Adams.

Township 28 north, range 15 east, 960 acres for A. J. Everett; 720 acres for Frank Lucas.

Township 29 north, range 15 east, 480 acres for Geo. and Eliza Falleaf.

Township 22 north, range 16 east, 880 acres for John Bullette.

Township 23 north, range 16 east, 1,117.66 acres for W. C. Smith.

Township 24 north, range 16 east, 480 acres for John Ketchum.

Township 25 north, range 16 east, 721.48 acres for William
380 Bobian; 80 acres for Lelia M. Carey; 240 acres for John Q. Conner; 200 acres for Benjamin Conner.

Township 26 north, range 16 east, 480 acres for M. E. Armstrong;

160 acres for Carrie V. Overlees; 240 acres for Chas. K. Long; 80 acres for Cora Keys; 160 acres for A. W. Ketchum; 120 acres for J. W. Keyes; 400.71 acres for L. A. Keyes; 160 acres for Barbara Strather; 480.82 acres for Irene Dick; 160 acres for Geo. Smith; 720 acres for Chas. V. Tanner; 160.18 acres for B. J. Love; 239.82 acres for Nancy Palmer; 160.10 acres for Susie Conner.

Township 27 north, range 16 east, 560 acres for C. W. Childers; 280 acres for Martha White; 360 acres for Susie Conner; 320 acres for Simon Love; 560 acres for Amanda Wilson; 316.25 acres for R. C. Adams; 480 acres for Jacob and Joseph Lucas; 240 acres for John Captain; 480 acres for Jeff. Zane.

Township 28 north, range 16 east, 320 acres for John Kinney.

Township 23 north, range 17 east, 160 acres for R. C. Adams.

Township 25 north, range 17 east, 79.81 acres for Lelia M. Carey; 320 acres for Henry Armstrong.

Township 26 north, range 17 east, 314.05 acres for M. E. Armstrong; 720 acres for Mary White; 160 acres for Henry Zeigler.

Township 27 north, range 17 east, 231.39 acres for Martha Conner; 432.68 acres for Susie Connor; 310.05 acres for Charles Childers; 468.33 acres for Horace Goodtraveler's children; 156.04 acres for Martha White.

Township 28 north, range 17 east, 440 acres for Martha Conner.

Township 25 north, range 18 east, 160 acres for John Paschal.

Township 15 north, range 19 east, 310 acres for R. C. Adams.

Township 16 north, range 19 east, 411.17 acres for R. C. Adams.

Township 22 north, range 19 east, 1,040 acres for R. C. Adams.

Township 23 north, range 19 east, 960 acres for R. C. Adams.

Township 24 north, range 19 east, 480 acres for Thomas Secondine.

Township 15 north, range 20 east, 173.41 acres for R. C. Adams.

Township 16 north, range 20 east, 1,025.17 acres for R. C. Adams.

Township 25 north, range 20 east, 170 acres for R. C. Adams.

Township 23 north, range 21 east, 160 acres for Mary Half; 565.25 acres for Elizabeth Ketchum; 443.60 acres for Mrs. Wyman Thompson.

Township 22 north, range 22 east, 1,200 acres for R. C. Adams.

Township 26 north, range 23 east, 160 acres for James Washington; 160 acres for Joseph Washington.

Township 11 north, range 24 east, 301.36 acres for R. C. Adams.

Township 21 north, range 24 east, 240 acres for R. C. Adams.

654 question. You have testified that you located the lands of these various people by the aid of Government maps of the locality in question and Government monuments. Did you at the same time make a record upon plats of the result of your observations and investigations?

Answer. Yes, sir.

655 question. What did you do with the plats upon which you made this record?

Answer. I brought them here to copy from them.

656 question. Describe what you did in the way of copying them.

Answer. We took the plats and colored in different colors the land occupied by the Delawares in each separate township from the memorandum I made.

381 657 question. Did you mark on these plats the number of the range and township?

Answer. Yes, sir.

658 question. Where did you get these plats?

Answer. From the land office.

659 question. I show you a plat on which is a colored record. Will you tell me what it represents?

Answer. It represents the land of George Bullette, 760 acres, in township 20 north, range 12 east of the Indian meridian.

660 question. Describe the tract in that township which is colored on that plat.

Answer. It is the east half of section 25, 320 acres; the northeast quarter of section 36, 160 acres; the east half of the northwest quarter of section 36, 80 acres; the north half of south half of section 36, 160 acres; the southeast quarter of northwest quarter of section 36, 40 acres.

(Counsel for complainants here introduced in evidence the plat just referred to, and it is marked "Complainant's Exhibit AAA.")

661 question. Is this plat, "Complainant's Exhibit AAA," a copy of your original memoranda?

Answer. Yes, sir.

662 question. Did you use a map of this kind in locating the land of George Bullette?

Answer. I used a Government township map; yes, sir; a map of that kind.

(It appearing that the original memoranda made by the witness consists, among other things, of Government maps which contain a quantity of lithographing, it is hereby admitted and consented by and between counsel that the copies of said memoranda and maps which are offered in evidence are correct copies, and that they be received in evidence in place of the original maps and memoranda referred to by the witness, subject to the same objections that attach to the said originals.)

663 question. Did you use these Government township maps in locating all the land you have testified to?

Answer. Yes, sir.

664 question. And you made your own memoranda also?

Answer. Yes, sir.

665 question. After you had made this memoranda and used these Government plats did you transcribe your notes on to maps which contained colored memoranda of the land owned by various people?

Answer. Yes, sir.

666 question. And is that transcription correct?

Answer. Yes, sir.

667 question. I now show you a paper, which you will please describe.

(Counsel for defendants further objects to the testimony of the witness on the ground that it has not been shown that he is an expert or that he is in any way competent to testify as to the boundaries of lands or that he has such experience, skill, or knowledge as enables him to testify as to the range, township, section, etc., in which the various lands are said to be located.)

382 Answer. This is a plat of township 21 north, range 12 east of the Indian meridian, which shows the land of George Bullette—the southeast quarter of section 2, 160 acres. The land of George Bullette is marked in red on said plat.

(Counsel for complainants offers said plat in evidence, and same is marked "Complainant's Exhibit BBB.")

668 question. I show you another paper. Please state what it is.

Answer. This is a map of fractional township 22 north, range 12 east of Indian meridian, and represents the land of Mrs Washington, marked in red, and the land of William Thomas, marked in green, and the land of Mary Barnett, marked in yellow. The land is described as follows: Mrs. Washington's land on said map consists of the east half of section 24, 320 acres; the northeast quarter of section 23, 160 acres. Mary Barnett's land consists of the northeast quarter of section 26, 160 acres; the north half of southeast quarter of section 26, 80 acres. William Thomas's land consists of the south half of section 13, 320 acres; the north half of northwest quarter of section 24, 80 acres.

(Counsel for complainants here introduced said plat in evidence, and same is marked "Complainant's Exhibit CCC.")

669 question. I show you another paper which you will please describe.

Answer, This is a map of fractional township 23 north, range 12 east of Indian meridian, and it has marked in green the land of Oh-lut-whe-now-a-qua, consisting of the east half of the northwest quarter of section 1, 80.21 acres; the south half of northwest quarter of northwest quarter of section 1, 20 acres; the southwest quarter of northwest quarter of section 1, 40 acres; the north half of southwest quarter of section 1, 80 acres; the northeast quarter of southeast quarter of section 2, 40 acres; the southeast quarter of northeast quarter of section 2, 40 acres, and the south half of the northeast quarter of northeast quarter of section 2, 20 acres.

(Counsel for complainants offers the plat in question in evidence and same is marked Complainants' Exhibit DDD.

Counsel for the complainants offers in evidence a number of plats similar to those described by witness, and they are marked in evidence Complainants' Exhibit EEE to Complainants' Exhibit ZZZ, inclusive, and Complainants' Exhibit AAAA to Complainants' Ex-

hibit ZZZZ, inclusive, and Complainants' Exhibit AAAAA to Complainants' Exhibit FFFFF, inclusive.)

670 question. Mr. Adams, I show you Complainants' Exhibit EEE. Please describe it.

Answer. This is a map of fractional township 24 north, range 12 east of Indian meridian; it has marked on it in red the land of William McEwin, which is described as follows: The east half of section 25, 320 acres; the northeast quarter of section 36, 160 acres; the east half of northwest quarter of section 36, 80 acres.

671 question. I show you the Complainants' Exhibit FFF. Please describe it.

Answer. This is a map of fractional township 25 north, range 12 east of Indian meridian, the land of Mathilda Halfmoon being red and the land of Pa-tah-a-coh-o painted green.

The land of Mathilda Halfmoon is the southwest quarter of the northwest quarter of section 13, 40 acres; the south half of the northeast quarter of section 14, 80 acres; the north half of the southeast quarter of section 14, 80 acres.

383 Pa-tah-a-coh-o's land is as follows: The southeast quarter of section 36, 160 acres.

672 question. I show you Complainants' Exhibit GGG. Please describe that.

Answer. This is a map of fractional township 26 north, range 12 east of Indian meridian, and shows the land of John Hallett, red; William Johnson, yellow; Jane Wheeler, green; Mary Anson, brick red; Josie Anderson, purple; Pat-tah-a-coh-o, pink; Joe Wagon, red stripe; Mrs. Andrew Miller, yellow stripe.

John Hallett's land is the northwest quarter of the northeast quarter of section 1, 40.05 acres; the south half of northeast quarter of section 1, 80 acres; the east half of northwest quarter of section 1, 80.07 acres; the south half of southeast quarter of section 1, 80 acres; the northwest quarter of southeast quarter of section 1, 40 acres.

William Johnson's land is described as the east half of southwest quarter of section 1, 80 acres; the east half of northwest quarter of section 12, 80 acres; the northwest quarter of northeast quarter of section 12, 40 acres; the north half of northeast quarter of northeast quarter of section 12, 20 acres; the southeast quarter of southeast quarter of section 12, 40 acres.

Jane Wheeler's land, the east half of southeast quarter of section 13, 80 acres.

Mary Anson's land, the west half of southeast quarter of section 13, 80 acres; the east half of southwest quarter of section 13, 80 acres; the east half of northwest quarter of section 24, 80 acres.

Josie Anderson, the north half of northeast quarter of section 24, 80 acres.

Pat-tah-a-coh-o, the southeast quarter of section 24, 160 acres; the northeast quarter of section 25, 160 acres; the east half of southeast quarter of section 25, 80 acres.

Joe Wagon, the southwest quarter of section 25, 160 acres.

Mrs. Andrew Miller, the south half of northeast quarter of section 36, 80 acres; the north half of southeast quarter of section 36, 80 acres.

(Counsel for the complainants offers to show witness Complainants' Exhibit HHH, and it appearing on said exhibit that same is a plat divided into geometrical squares, the same as the other exhibits referred to and testified to by the witness, which plat is entitled "Township No. 27 north, range 12 east of Indian meridian;" and it appearing that there are set out on said plat various colors, and it appearing that there is on said plat a legend which contains the name of some person opposite each color, and that there is attached to said exhibit a typewritten paper which purports to describe the land of each person whose name is set out in said legend, it is stipulated by and between counsel for the parties hereto that the witness would testify that the exhibits set forth the land belonging to the people whose names appear in the said legend located in the township in question, and that the number of acres and the description of said land contained in the said typewriting and accorded to each person is the number of acres and description that the witness would testify to if asked in detail; and it is further stipulated that the said plat be received in evidence for what it appears to be, as though testified to by the witness, with the same force and
384 effect as if the witness were to testify to it in detail, but with no other; and that the said typewriting be received in evidence as the testimony of the witness with the same force and effect as if he, in so many words and in the language and figures set out in said typewriting, testified to same, but with no other force and effect than if so testified to by him.

It is further stipulated that the foregoing stipulation shall apply to the following exhibits and typewriting and legends and all marks appearing thereon or attached thereto; this being done to save time, and it being understood that these are received the same as if the witness were examined with reference to them, but subject to any and all objections properly existing against the testimony of this witness, the same as if they were interposed and set out herein.

The following are the exhibits with regard to which the foregoing stipulations are, in effect, between counsel.

Complainants' Exhibits III, JJJ, KKK, LLL, MMM, NNN, OOO, PPP, QQQ, RRR, SSS, TTT, UUU, VVV, WWW, XXX, YYY, ZZZ; Complainants' Exhibits AAAA, BBBB, CCCC, DDDD, EEEE, FFFF, GGGG, HHHH, IIII, JJJJ, KKKK, LLLL, MMMM, NNNN, OOOO, PPPP, QQQQ, RRRR, SSSS, TTTT, UUUU, VVVV, WWWW, XXXX, YYYY, ZZZZ; Complainants' Exhibits AAAAA, BBBBB, CCCCC, DDDDD, EEEEE, FFFFF.)

673 question. You have heard the foregoing stipulation and you have heard the list of exhibits called out to the stenographer. These various exhibits were prepared by you, were they not?

Answer. Yes, sir.

674 question. And, as to the land represented by each exhibit, state what you know, together with what you know as to the person occupying said land.

Answer. I have been over all the land. The people occupying it claim it for their own, use it, and occupy it by farming the land themselves or by a tenant.

675 question. And is this true of each plat of land that is portrayed upon the exhibits that have to-day been offered in evidence?

Answer. Yes, sir.

676 question. The names of the people that appear upon these exhibits, are they the correct names of the people occupying the land in question?

Answer. Yes, sir.

677 question. Do you know that as a matter of personal observance?

Answer. Yes, sir.

678 question. State what you did to ascertain that.

Answer. I went to the people themselves and found their different locations. I was personally acquainted with nearly every Delaware in the tribe.

679 question. What acquaintance have you among this people, if any?

Answer. I have lived among them all my life, and I have been with a great many of them personally.

680 question. Have you visited them?

Answer. Yes, sir.

681 question. Have you received visits from them?

Answer. Yes, sir.

682 question. Are these people Cherokees or Delawares?

Answer. They are Delawares.

385 683 question. These exhibits which have been received in evidence to-day pretend to describe certain lots of land, and they describe the ownership and occupation of these lands to certain people whose names are set forth on the exhibits. State what you know as to the correctness of the description of these lands and the occupancy of them as set out by said exhibits.

Answer. I went to each different tract of land separately and found the owner of the tract, and got the location from the Government township maps and by going to the Government corner stones on each separate tract, and I got the description from the map and corner stones and made a note of this, from which I drew these plats.

684 question. These maps, then, which you prepared, set forth in accurate detail the result of the notes and memoranda which you made as you have described?

Answer. Yes, sir.

685 question. As to each parcel of land in question, what did you see in the way of improvements and occupancy?

Answer. I saw on them houses and farms, orchards, pastures, etc.

686 question. Is any of the land which is set out on these exhibits unoccupied and unclaimed?

Answer. No; not according to our laws.

687 question. What do you mean by that?

Answer. According to our laws we hold a quarter of a mile from our improvements as our possession.

688 question. This is the Cherokee law?

Answer. Yes, sir; where our land does not conflict with our neighbor or eldest settler.

689 question. This is the general custom in the Cherokee nation at present?

Answer. Yes, sir.

690 question. These people whose names are set out on these exhibits, do they claim the land ascribed to them on said exhibits?

Answer. Yes, sir; they claim the ownership of the land described.

691 question. Is their possession disputed or undisputed, so far as you know?

Answer. It is undisputed as far as I can say.

692 question. Did you see any two people claiming the ownership of the same piece of land?

Answer. No, sir.

693 question. Do any Cherokees make claim to the land occupied by these Delawares whose names appear in these exhibits?

Answer. Not as I know of.

694 question. They are in public and peaceful possession of it?

Answer. Yes, sir.

695 question. Did you examine each piece of land and locate the boundaries thereof, as is set out on the exhibits received in evidence to-day?

Answer. Yes, sir.

696 question. And in making that location and examination what maps or records did you use, if any?

Answer. I had the Government township maps.

697 question. What do you mean by Government township maps?

Answer. The maps of the different townships that I got in Washington from the Land Office and Geological Survey.

386 698 question. Did you get them from there?

Answer. I got them from my brother and he got them there.

699 question. I show you a photolithographic plat entitled fractional township 20 north, range 12 east, of Indian meridian, Indian Territory, signed Geological Survey, Washington, D. C., March 21, 1898, Charles D. Walcott, director, and ask you if you used this map in locating anybody's land in the Indian Territory?

Answer. I did.

700 question. Whose land did you locate with the help of this map?

Answer. George Bullette's.

701 question. In addition to using this map did you make any note of locations or other boundaries?

Answer. Yes, sir.

702 question. What did you do in that regard?

Answer. I went to the corner stone on the ground claimed by George Bullette—the Government corner stone.

703 question. What else, if anything?

Answer. And the township corners.

704 question. How are these corners marked?

Answer. By an iron post securely set in the ground, and printed on the top of it is the township and range.

(Counsel for complainants here offered in evidence the map just above referred to, and same is marked "Complainants' Exhibit GGGGG.")

705 question. Did you, in locating all the other lands in regard to which you have testified in your to-day's examination and your former testimony, use Government maps similar to this map, "Complainants' Exhibit GGGGG"?

Answer. Yes, sir.

706 question. And this exhibit, "Complainants' Exhibit GGGGG," is a specimen copy of such Government plats which were used by you in making your locations?

Answer. Yes, sir.

707 question. You state that you are familiar with the system of Government survey of land in the Indian Territory?

Answer. Yes, sir.

708 question. Describe what you know about that; take your time and be just as full as you can.

Answer. The land is divided into ranges and townships, each township running north of a base line, and each range runs east of the Indian meridian; the townships are divided into sections and the sections into quarter sections. At the corner of each township is an iron post, which is marked in plain letters and figures with the number of the township and range it is located in, and at the corner of each section is a stone—when it is a prairie it is a stone marked with the number of miles from the township line east and north; when in the timber the witness trees are marked with the section, range, township, etc.

709 question. Is there not some law against changing these boundaries?

Answer. It is $250 fine for moving or destroying any of these corner stones or iron posts; it is printed on the iron posts.

710 question. Are there any other physical boundaries?

Answer. At each half mile from the cornerstone at the corner of each section is a quarter stone marked ¼, and you can tell
387 when you are at the half section line. Then, in addition to these posts and stones, you find holes dug in the ground where there is no timber—if it is a section corner there are four holes in the ground—if a half section, one hole on each side of the

stone running in the direction the section line is running; if it is north, there is one hole on the south and one on the north side of the stone.

711 question. I show you a paper containing resolutions; what is it, and tell us what you know about it?

Answer. It is a declaration adopted at the Delaware council October 11, 1898, by the Delaware council and members of the business committee and signed by the chairman and secretary of the council.

712 question. Who is that business committee?

Answer. It is composed of five men appointed by the Secretary of the Interior—Henry Armstrong, John Secondine, George Bullette, John Young, Littlejohn Sarcoxie.

713 question. They are appointed by the Secretary of the Interior of the United States of America to act as a business committee for the Delaware nation?

Answer. They act as the business committee for the Delawares.

714 question. Were any others present besides the council and the Delaware business committee?

Answer. Yes; a great many others.

715 question. How did they happen to come there?

Answer. They were called together by the business committee.

716 question. Has the committee any way of calling the people together when there is anything to be adopted at the council?

Answer. They notify certain of the Delawares in each locality to meet at a fixed time and a fixed place where they all meet.

717 question. You mean notify heads of families?

Answer. Yes, sir.

718 question. And each head of a family is notified in advance?

Answer. As many as can be.

719 question. Does this notification state the object of the meeting?

Answer. Yes, sir.

720 question. How many heads of families were present when this declaration was adopted by the council?

Answer. About 150, I should say.

721 question. Were you there?

Answer. Yes, sir.

722 question. Where was this meeting held?

Answer. At Bartlesville, Ind. T.

(Counsel for the complainants offers this declaration above referred to in evidence, and same is marked "Complainants' Exhibit HHHHHH.")

723 question. I show you this book of record, and ask you what that is. This book is called what?

Answer. This is a book bound in leather, containing on the first page a copy of Complainants' Exhibit HHHHHH, and it also contains the following record, namely, the name of each Delaware Indian as it appears on the register made February 18, 1867, by John G. Pratt, the former Delaware Indian agent. It contains also a

record of each Delaware who was on that register who is living, and each Delaware that was on that register who is dead; also a record of the children of each Delaware on that record born since the record was made and living on the 4th of August, 1898;
388 and it contains each grandchild or other heirs of a deceased Delaware whose name appeared upon Mr. Pratt's register. It contains likewise the age of each person living whose name appeared on that register, and it contains a witness to the mark or signature of each person living whose name appears upon Mr. Pratt's register, and also the day upon which the signature was made.

724 question. Did you witness any of these signatures?

Answer. I witnessed all except about fifteen—at least, I witnessed all those to whom my signature appears as a witness.

725 question. State how this book was gotten up?

Answer. I went to each person with the book and they put down their names in my presence, and I asked each of them the questions sufficient to give me the information that appears set out in the book.

726 question. When you asked these questions did you get the information which is set out in this book from each owner or occupant of a tract of land?

Answer. Yes, sir.

727 question. I notice that the book does not contain a complete record of the number of acres in cultivation in possession of each person, and the acres inclosed in the possession of each person, and the number of acres not inclosed or adjacent to each person, and that there is also no record of the section, range, or township. Why was this information left out?

Answer. I prepared that information later, and it is contained in the exhibits that were received in evidence to-day and on my former examination.

728 question. I notice that there appears to be other witnesses to these names besides yourself; are these witnesses in Washington?

Answer. No, sir.

729 question. Where are they?

Answer. They are in the Cherokee nation, Ind. T.

730 question. Were these people whose names are set forth in this book acquainted with this suit in which your evidence was being taken?

Answer. Yes, sir.

731 question. And were they in harmony with it?

Answer. Yes, sir.

732 question. Did they understand what part they were taking in the suit?

Answer. Yes, sir.

733 question. What part do they suppose they take in this suit?

Answer. The complainants.

734 question. They knew that they were not being sued?

Answer. Yes, sir.

735 question. Do they understand that they are going to have land taken away from them or given to them?

Answer. They understand that they are going to get more land.

736 question. Do you understand what I mean when I said complainants?

Answer. I understand that they are the parties suing for the land.

737 question. Who paid your expenses for obtaining this record which contains this information about which you have just testified?

Answer. Mr. Richard C. Adams.

(Counsel for complainants offers said book in evidence, and same is marked "Complainant's Exhibit IIIII.")

It is hereby stipulated that the examination of Horace M. 389 Adams be suspended and that the deposition of Mr. Ithemar P. Berthrong be taken in this suit, and that the cross-examination of the witness, Horace M. Adams, proceed after the deposition of the said Berthrong shall have been completed.

HORACE M. ADAMS.

DISTRICT OF COLUMBIA, *ss:*

I, Harry H. Hollander, a notary public in and for the District of Columbia, certify that at the time and place aforesaid Horace M. Adams, a witness on behalf of the plaintiffs in the above-entitled cause, was sworn by me before any question was put to him to tell the truth, the whole truth, and nothing but the truth relative to the said cause, and that the answers were taken down in my presence, and his deposition as above set forth was read over to and signed by him before me at the time and place aforesaid.

In witness whereof I have hereunto set my hand and official seal this 2d day of January, 1901.

HARRY H. HOLLANDER,
Notary Public.

Continuation of deposition of Horace M. Adams, a witness produced, sworn, and examined at the hour of 2:30 p. m. on the 19th day of February, 1901, at Muscogee, Indian Territory, before the undersigned notary public for the northern district of the Indian Territory in the above-entitled cause.

Present on behalf of complainants, Kenneth S. Murchison, Esq., of counsel.

Present on behalf of defendants, William T. Hutchings, Esq., attorney.

And thereupon said HORACE M. ADAMS was cross-examined by counsel for defendants and testified as follows in answer to interrogatories:

Question. What proportion of the living Delawares who claim rights in the Cherokee nation have you named in describing the lands claimed by them in your testimony in chief?

(Objected to by counsel for complainants for the reason that the question is irrelevant and immaterial.)

Answer. I didn't try to get the proportion.

Question. Have you mentioned the names of all the Delawares who have made or own farms or improvements in the Cherokee nation?

(Objected to for the reason that the question is irrelevant and immaterial.)

Answer. No, sir.

Question. Why did you mention some and not mention all?

(Objected to by counsel for complainants because the question is irrelevant and immaterial.)

Answer. There were a few that didn't feel like taking part in the suits.

Question. Did you know of those you mentioned what amount of land they held for each member of the family?

Answer. No, sir.

Question. In speaking of their having so much land, as designated on the map or maps in evidence, have these people moved their fences on section lines or are they merely claiming the land within the section lines and not all within their inclosures?

(Objected to as irrelevant and immaterial.)

390 Answer. Some of them have moved their fences and some of them have not.

Question. Then do not most of the improvements lie irregularly and not on section lines?

(Objected to as irrelevant and immaterial.)

Answer. Yes, sir.

Question. When the Delawares made ther improvement originally did they not improve places just as other Cherokee citizens did—inclosing and cultivating just as much land as they were able to or were inclined to?

(Objected to as irrelevant and immaterial.)

Answer. Yes, sir.

Question. Did they not preserve what is called in the Cherokee law the quarter of a mile limit, and comply in all other respects, including improvements, with the laws and customs prevalent at the time amongst native Cherokees?

Answer. Yes, sir.

Question. I notice that you speak of a certain resolution which was passed by the Delaware council. What was this council and how was it composed?

Answer. It was composed of the Delaware business committee and

the heads of families of the Delawares; they had a chairman and secretary appointed by the people there at the council.

Question. This council was selected, was it not, by a convention of the Delaware people for the purpose of conducting such unsettled business of the tribe as was peculiar to the Delawares and about which the Cherokee nation was not concerned?

Answer. Yes, sir.

Question. Did not the Delawares participate at all times in the elections of members to the council and the election of chief of the nation and exercise all other public functions which any native Cherokee exercised after they were incorporated into the Cherokee nation?

Answer. Yes, sir.

Redirect examination by Mr. MURCHISON, counsel for complainants:

Question. The names mentioned by you of Delawares holding lands are heads of families?

Answer. Yes, sir.

Question. Then the land held by each individual mentioned by you are held for the individual and his family?

Answer. Yes, sir.

Question. So that the number of names that are actually mentioned in your deposition does not by any means represent the proportion of the Delawares' interest in the lands described?

Answer. No, sir.

HORACE M. ADAMS.

UNITED STATES OF AMERICA, }
Indian Territory, Northern District. }

I, Clara Mitchel Wood, a notary public in and for the northern district of the Indian Territory, certify that at the time and place aforesaid Horace M. Adams, a witness on behalf of the plaintiff in the above-entitled cause, was sworn by me before any question was put to him to tell the truth, the whole truth, and nothing but the truth relative to the said cause, and that the answers were
390½ taken down by me and his deposition as above set forth was read over to and signed by him before me at the time and place aforesaid.

In witness whereof I have hereunto set my hand and official seal this 19th day of February, A. D. 1901.

CLARA MITCHEL WOOD,
Notary Public.

390½–414 PLAINTIFFS' EXHIBITS BB TO ZZ, INCLUSIVE, AND AAA TO FFFFF.

These exhibits are separate maps and descriptions of land in the Cherokee nation in possession of individual Delawares and claimed to be occupied and improved by them, and, taken altogether and in connection with the testimony of Horace Adams, and in connection with the stipulation specifically setting forth the land occupied by each individual Delaware, which stipulation is dated December 10, 1902, the particular land occupied by each Delaware and the aggregate amount of land occupied by all the Delawares can be determined.

These exhibits are on file in full in the Court of Claims, but, by consent, are not printed here in full.

415 PLAINTIFFS' EXHIBIT HHHHH.

INDIAN TERRITORY, *Oct.* 11, 1898.

We, the undersigned, Delaware Indians residing in the Cherokee nation, being the survivors of the Delaware Indians whose names appear upon the register of Delaware Indians made in February, 1867, by John G. Pratt, the United States Indian agent for the Delaware Indians, and on file in the Department of the Interior of the
416 United States, and known as the "Delaware register," and the next of kin and heirs at law of such registered Delaware Indians who have since deceased, do hereby certify:

1. Whereas in and by a certain agreement made the 8th day of April, 1867, between the Cherokee nation and the Delaware tribe of Indians, the Cherokees, parties of the first part, for and in consideration of certain payments and the fulfillment of certain conditions therein mentioned, among other things, agreed:

"To sell to the Delawares, for their occupancy, a quantity of land east of the line of 96° west longitude, in the aggregate equal to one hundred and sixty acres for each individual of the Delaware tribe who has been enrolled upon a certain register made February 18th, 1867, by the Delaware agent and on file in the Office of Indian Affairs, being the list of Delawares who elect to remove to the Indian country, to which list may be added, only with the consent of the Delaware council, the names of such other Delawares as may, within one month after the signing of this agreement, desire to be added thereto. *And the selections of the lands to be purchased by the Delawares may be made by the said Delawares in any part of the said Cherokee reservation east of the line of 96° not already selected and in possession of other parties.*"

And whereas the said Delawares made the said payments and fulfilled all of said conditions:

And whereas the number of said Delawares enrolled upon the said register, being the list of Delawares who elected to remove to the Indian country, including the names of other Delawares added with the consent of the Delaware council within one month after the signing of said agreement, of those desiring to be added thereto, as provided by said agreement, was 985, making the number of acres of land sold by the Cherokees and to be selected by the Delawares as aforesaid 157,600.

Now, therefore, we, Delaware Indians as aforesaid, do hereby certify that the selections of land made by the said registered Delaware Indians and the heirs of such as died before selections were made are as herein appears and is set forth.

2. Whereas by the 25th section of the act of Congress approved June 28th, 1898, entitled "An act for the protection for the people of the Indian Territory, and for other purposes," it was provided:

"Before any allotments shall be made of lands in the Cherokee nation there shall be segregated therefrom, by the commission heretofore mentioned, in separate allotments, or otherwise, one hundred and fifty-seven thousand six hundred acres purchased by the Delaware tribe of Indians from the Cherokee nation under agreement of April 8th, 1867."

Now, therefore, the said Delaware Indians respectfully request that the one hundred and fifty-seven thousand six hundred acres of land selected by the said Delawares as aforesaid and herein described and set forth be segregated from the other lands in the Cherokee nation, in pursuance of provisions of the said section of the said act.

3. Whereas by an agreement dated August 4th, 1898, and duly acknowledged on the said date before a court of record—said agreement being in confirmation of previous agreements of the same nature—and of other like agreements with individual Delawares, Richard C. Adams and John Bullette are made, constituted, and appointed the true and lawful attorneys of the said Delawares, and of each of them, irrevocable, for the purposes therein mentioned,
417 including the purpose of representing the said Delawares in any and all controversies with the said Cherokees over their respective rights and of bringing to a determination all questions which were or might be in controversy concerning said rights.

And whereas the said Richard C. Adams and John Bullette, under and by virtue of said agreements, and as compensation for the services rendered and to be rendered by them, under and under the authority of the said agreements, are entitled, among other things, for themselves and their assigns, to 25,640 acres of said 157,600 acres of land, as well as to an equal proportion of the lands to which the said Delawares may be entitled in addition to said 157,600 acres, by virtue of their communal rights or rights as citizens of the said Cherokee nation.

Now, therefore, we, the said Delaware Indians, do hereby further ratify and confirm the said agreements with said Richard C. Adams and John Bullette, and we do hereby certify that the said Richard

C. Adams and John Bullette have full power and authority on our behalf, and on behalf of all of said Delaware Indians, to act for and represent us in all matters of controversy between the said Delawares and the said Cherokees, and in all matters relating to the said lands—as well the lands to which we may be entitled by virtue of our communal rights or rights as citizens of the Cherokee nation, as the said 157,600 acres of land purchased by the said Delawares as aforesaid—and in all matters relating to the selection of said lands or the establishing of the title of the said Delawares thereto, and in all matters relating to the recovery of our share and the share of the said Delaware Indians in and to the communal funds of the said Cherokee nation, and in all matters relating to the claim, or claims, of the said Delaware Indians against the United States Government, and that, as to any and all of such matters, and as to any and all other matters mentioned or referred to in the said agreements with said Richard C. Adams and John Bullette, the said Richard C. Adams and John Bullette have as full power and authority in the premises, on our behalf, and on behalf of the said Delawares, as we, or the said Delawares, might or would have if we were personally present and acting for ourselves, and that the said power and authority so granted to and conferred upon the said Richard C. Adams and John Bullette, as aforesaid, is coupled with an interest and irrevocable.

The foregoing certificate or declaration, which was read and interpreted and is a part of the register, is hereby adopted by the Delaware council and authorized to be a part of the record.

COL. JACKSON, *Chairman.*
WM. ADAMS, *Sec.*

Deposition of Henry C. Meigs, for Claimants, Taken at Muscogee, Ind. T., on the 2d Day of November, A. D. 1900.

Claimant's counsel, M. E. Harby; defendants' counsel, Wm. T. Hutchings.

Direct examination by M. E. HARBY:

Question. Will you tell me what is your occupation, how old you are, and where you reside?

418 Answer. Well, I am 59 years old this month; I live at Fort Gibson, Creek (Cherokee?) nation, and my occupation has been a clerk in a store most of the time. I am a Cherokee citizen; I was born at Park Hill, Ind. T.

Question. Have you any interest in this case, Mr. Meigs?

Answer. No, sir.

Question. Do you know where you were in the month of November, 1866?

Answer. In Tahlequah.

Question. What was your business in Tahlequah at that time?

Answer. I was a clerk in a store there.

Question. There is a part of the constitution of the Cherokee nation which reads as follows: "Sec. 10. The national council may propose such amendments to this constitution as two-thirds of each branch may deem expedient, and the principal chief shall issue a proclamation directing the civil officers of the several districts to promulgate the same as extensively as possible within their respective districts at least six months previous to the next general election, and if at the first session of the national council after said general election two-thirds of each branch shall by ayes and noes ratify said proposed amendments, that they shall be valid to all intents and purposes as parts of this constitution, provided that said proposed amendments shall be read on three several days in each branch, as well when the same are proposed as when they are ratified." You are familiar with this section of the constitution?

Answer. Yes, sir.

Question. Now, there is in the Cherokee law books something called amendment to the constitution, which is marked "Exhibit S" in this case. I will read you section 5 of amendments to article 3: "No person shall be eligible to a seat in the national council but a male citizen of the Cherokee nation who shall have attained to the age of 25 years and who shall have been a *bona fide* resident of the district in which he may be elected at least six months immediately preceding said election. All native-born Cherokees, all Indians and whites resident members of the nation by adoption, and all freedmen who have been liberated by voluntary act of their former owners or by law, as well as every colored person who was in the country at the commencement of the rebellion and are now residents therein or who may return within six months from the 19th day of July, 1866, and their descendants who reside within the limits of the Cherokee nation, shall be taken and deemed to be citizens of the Cherokee nation." You are familiar with that section?

Answer. Yes, sir.

Question. Do you remember a number of people meeting at Tahlequah about November 26, 1866?

Answer. Yes, sir.

Question. What was the purpose of that meeting?

Answer. For the ratifying of the amendments of the constitution.

Question. The amendment which I read was proposed to that meeting?

Answer. Yes, sir.

Question. How long before this meeting was called did the national council meet?

Answer. It met the first Monday in October. These amendments of the constitution changed time to November.

419 Question. At the time the national council met, October—in the month of October—the constitution had not been amended at that time?

Answer. No sir.

Question. When these people met in November, was any notice given them to meet?

Answer. Yes, sir; I think there was. I don't remember seeing any notice, but I think there was.

Question. In what manner was notice given?

Answer. I suppose by sending out messages.

Question. Were the proposed amendments to the constitution made known to the public, or were they simply called to meet at Tahlequah?

Answer. I suppose it was the object in calling them together. Provision was made for public cooks.

Question. Were copies of the amendment sent out to the people?

Answer. I don't remember about that.

Question. The original constitution says that when amendments to the constitution are proposed and voted on by two-thirds of each branch of the national council the principal chief shall issue a proclamation directing the officers of the several districts to promulgate the same at least six months previous to the next general election. Was that done in this case?

Answer. I don't know of anything of that kind being done.

Question. There wasn't any six months' notice given at all?

Answer. No, sir; not to my recollection; there was about two or three weeks; it couldn't have been more than two or three weeks; the council met in October and this was in November.

Question. And it was at the meeting of the council previous to the meeting of these people in November that these proposed amendments were voted on?

Answer. Yes, sir.

Question. Is it true that whatever the notice was given was actually given between the meeting of the council in the early part of October and the meeting of these few people on the 26th day of November?

Answer. Yes, sir.

Question. This notice that was sent out to the people—was that a notice saying that there was to be a vote on amendments to the constitution, or did the notice say what the amendments were?

Answer. As well as I remember it was simply a notice of meeting to adopt amendments to the constitution.

Question. And didn't say what the amendments were?

Answer. No, sir.

Question. When these people met, whereabouts in Tahlequah did they meet?

Answer. Right there in Tahlequah in the public square in the open air.

Question. And did anybody preside over them?

Answer. Yes, sir.

Question. Who?

Answer. Why, let's see; I forget just now, but it was Riley Keys, and I believe Gritts and Col. Ross. I can't say which was president.

Question. These people you mentioned were head men?

Answer. Yes, sir.

Question. Well, what did they do at the convention with regard to these amendments.

420 Answer. They read the treaty of '66 and they read those proposed amendments making provision for freedmen—that what you read.

Question. Did the people that were there vote on them?

Answer. They didn't have a vote. There was no votes counted; they just accepted it, the way I understood it.

Question. You mean to say that some of the people sitting round gave the Cherokee exclamation which means "all right"?

Answer. Yes, sir.

Question. The body standing immediately around the stand said "all right" in Cherokee?

Answer. Yes, sir; they did.

Question. What else did they do?

Answer. That's about all I remember of them doing.

Question. There wasn't anything else done, was there?

Answer. Not that I know of.

Question. After that they had a barbecue, didn't they?

Answer. Yes, sir; they had public cooks there to feed the public, paid by the country; the country made provision.

Question. This evidence that you have given to-day as to the meeting in which those amendments were adopted is well known in the Creek [Cherokee?] nation, is it not?

Answer. Yes, sir.

Question. Are there any other persons living besides yourself who can testify to these facts which you have testified about?

Answer. Yes; there ought to be a good many yet. Houston Benge, I think, was interpreter.

Question. He is sick now, isn't he?

Answer. I don't know; I ain't seen him for several days.

Question. The fact that these amendments were adopted in the meeting you testified about is not disputed at all, is it?

Answer. No, sir.

Question. Do you know of any other fact that is of interest in this case?

Answer. Not that I can think of.

It is hereby agreed and stipulated between M. E. Harby, counsel for the plaintiffs, and Wm. T. Hutchings, counsel for the defendants, that the foregoing is the testimony of Henry C. Meigs, and that the same has been regularly and duly taken, and we hereby waive the signing of said testimony by the said Meigs and consent that the same, unsigned, form a part of the record in this case and be taken as a part of the testimony and evidence as being duly and properly taken in this case, and we hereby waive all rules or statutes to the contrary notwithstanding.

Dated November 2, A. D. 1900, at Muskogee, Ind. T.

M. E. HARBY.
WILLIAM T. HUTCHINGS.

CITY OF MUSKOGEE, }
Indian Territory. }

I, Clara M. Wood, a notary public within and for the northern district of the Indian Territory, residing at Muskogee, do certify that the aforesaid Henry C. Meigs was duly sworn by me, and that the foregoing questions were put to him in my presence and the foregoing answers answered by him in my presence and taken down by me, and that the same is the testimony given by him,
421 and that the foregoing stipulation was entered into in my presence between the said Harby and Hutchings, who signed the same in my presence.

Dated at Muskogee this 2d day of November, A. D. 1900.

[SEAL.] CLARA M. WOOD,
Notary Public.

Deposition of David Muskrat, for Claimants, Taken at Muskogee, Ind. T., on the 2d Day of November, A. D. 1900.

Claimants' counsel, M. E. Harby; defendants' counsel, Wm. T. Hutchings.

The said Muskrat is examined through John Henry Dick, interpreter, the said Dick being first duly sworn to truthfully translate to the said Muskrat such questions as shall be put to him and to truthfully translate the answers thereto. Examination is taken pursuant to stipulation by Clara M. Wood, a notary public in and for the northern district of the Indian Territory.

Question. How old are you, where do you live, and what is your occupation?

Answer. Fifty-four years old; residence, Flint district, Cherokee nation; my occupation is that of a farmer.

Question. Are you a native-born Cherokee?

Answer. Yes, sir.

Question. Have you any interest in the result of this action?

Answer. I have no interest except as a citizen of the Cherokee nation.

Question. Where were you in the month of November, 1866?

Answer. I was at home and also at Tahlequah.

Question. Were you at Tahlequah on the 26th day of November, 1866?

Answer. I can't say as to the day of the month, but I was present there at that meeting in Tahlequah.

Question. Do you refer to a meeting where it was proposed to amend the constitution?

Answer. Yes, sir.

Question. How did the people that were there happen to come together?

Answer. My recollection is that at that time it was customary

with the chief to notify the district officers; that is, the judge and the clerk of the district.

Question. Were the people notified in this manner on this occasion?

Answer. That is my recollection.

Question. How long before that meeting were they notified?

Answer. To the best of my recollection about one or two weeks—a very short time

Question. How many of them met together on the 26th day of November?

Answer. They estimated the men to number about 300 or a little more; including the women and children, it made a number in the neighborhood of a thousand..

Question. What did they do when they met at Tahlequah?

Answer. They read the treaty of 1866, together with the amendment of the constitution of the Cherokee nation.

Question. Who read them?

422 Answer. I don't remember the person who read them.

Question. Who presided over that meeting?

Answer. My recollection is it was Riley Keys.

Question. Was Colonel Ross there at all?

Answer. My recollection is that he was present. I was not a member of the council.

Question. Were the proposed amendments read to the people?

Answer. That's my recollection.

Question. How did they vote on it, by word or mouth or by writing vote?

Answer. By mouth. There was no writing.

Question. Do you know how the method of voting is prescribed by the Cherokee laws?

Answer. I think so.

Question. Was that method followed out in this case?

Answer. No.

Question. There is printed in one of the law books something called amendments to the constitution, and it appears as Exhibit S in this case. Section 5 of amendments to article 3 of that constitution prescribes that native-born Cherokee Indians, whites resident members of the Indian Territory by adoption, freedmen who have been liberated by voluntary act of their former owners or by law, every colored person who was in the country at the commencement of the rebellion and is now residing therein or who may return within six months from July 19, 1866, and their descendants who reside within the limits of the Cherokee nation, shall be deemed to be citizens of the Cherokee nation. Was this one of the amendments passed by the meeting held at Tahlequah in November, 1866, which you have mentioned in this examination?

Answer. Yes, sir.

Question. Did you hold any office in the Cherokee nation at that time?

Answer. No, sir.

Question. Have you held any since? If so, state what.

Answer. I was elected to the council in 1879; after the expiration of my term in the council, I was elected as a member of the executive council; after serving my time out as a member of the executive council, I was elected solicitor of Flint district; after the expiration of that term, I was elected to the senate. I was elected to the senate again.

It is hereby agreed and stipulated between M. E. Harby, counsel for the plaintiffs, and Wm. T. Hutchings, attorney for the defendants, that the foregoing is the testimony of David Muskrat, and that the same has been regularly and duly taken, and we hereby waive the signing of said testimony and evidence as being duly and properly taken in this case, and we hereby waive all rules or orders to the contrary notwithstanding.

Dated November 2, A. D. 1900, at Muskogee, Ind. T.

M. E. HARBY.
WILLIAM T. HUTCHINGS.

CITY OF MUSKOGEE, }
Indian Territory. }

I, Clara M. Wood, a notary public within and for the northern district of the Indian Territory, residing at Muskogee, do
423 certify that the aforesaid David Muskrat was duly sworn by me, and that the foregoing questions were put to him in my presence and the foregoing answers made by him in my presence, and taken down by me, and that the same is the testimony given by him, and that the foregoing stipulation was entered into in my presence between the said Harby and Hutchings, who signed the same in my presence.

Dated at Muskogee, November 2, 1900.

[SEAL.] CLARA M. WOOD,
Notary Public.

Stipulation.

Whereas the testimony of H. C. Meigs and David Muskrat has been duly taken in this cause on behalf of the plaintiffs, on November 2nd, 1900, before Clara M. Wood, a notary public, pursuant to stipulation between the counsel thereto; and

Whereas the counsel for the plaintiffs declares his intention of calling as witnesses Doc Cunningham, Daniel Gritts, Joab Scales, and Houston Benge; and

Whereas the parties hereto desire to shorten the record as much as possible, it is, in consideration of the premises, stipulated and agreed by the counsel for the defendants as follows:

First. That said Doc Cunningham, Daniel Gritts, Joab Scales, and Houston Benge are natives of the Cherokee nation and are Cherokee Indians.

Second. That they are all reputable men, well known, and worthy of being believed.

Third. That the said Doc Cunningham, Daniel Gritts, Joab Scales, and Houston Benge will testify to the same effect and in the same manner and of the same facts as the joint testimony of the said Meigs and Muskrat.

Fourth. That the said testimony of the said Meigs and Muskrat may be used upon the trial and argument of this cause as though it were the testimony also of the said Doc Cunningham, Daniel Gritts, Joab Scales, and Houston Benge.

Witness my signature this 8th day of November, 1900, in the city of Muscogee, Indian Territory.

WILLIAM T. HUTCHINGS,
Attorney for Defendants.

INDIAN TERRITORY, }
City of Muscogee, Northern District. }

Be it known that on this 8th day of November, 1900, before me Clara M. Wood, a notary public within and for the northern district of the Indian Territory, duly appeared William T. Hutchings, known to me to be the attorney for defendants and the person mentioned in the foregoing stipulation, and he duly signed the same in my presence and acknowledged to me that he signed the same.

Witness my hand and seal this 8th day of November, 1900.

[SEAL.] CLARA M. WOOD.

424 *Deposition of Ithamar P. Berthrong, for Claimants, Taken at Washington, D. C., on the 29th Day of December, A. D. 1900.*

Claimants' counsel, M. E. Harby; defendants' counsel, John J. Hemphill.

Mr. ITHAMAR P. BERTHRONG, having been produced on behalf of the complainants, was by me, the undersigned notary public, duly sworn, before any interrogatory was but to him, to tell the truth, the whole truth, and nothing put the truth in relation to the said cause, and thereupon deposed and said that his name is Ithamar P. Berthrong, and that his occupation is that of a topographical draftsman; that he is 47 years of age and that his place of residence is Washington, D. C.; that he has no connection with any of the parties to this suit and has no interest in the result of same.

By Mr. HARBY:

1 question. Mr. Berthrong, where are you employed?

Answer. I am employed in the General Land Office.

2 question. Of the United States Government, at Washington, D. C.?

Answer. Yes, sir.

3 question. How long have you been employed there?

Answer. Since 1882.

4 question. What are your duties?

Answer. My duties are to compile and draw State maps—that is, of public land, States and Territories.

5 question. And you have been engaged in that business since 1882?

Answer. Yes, sir.

6 question. Will you please look at this map I show you and tell us what you know about it?

Answer. It is a photolithographic copy of a map I made, compiled, and drew of the Cherokee nation. It was also colored by me.

7 question. From what information did you get the data that enabled you to draw this map of the Cherokee nation?

Answer. From the official map compiled in the office of the United States Government.

8 question. What do these red plats on this map represent?

Answer. They represent various tracts of land.

9 question. In whose possession?

Answer. It represents land that was described on plats that were given me.

10 question. From what plats or maps did you obtain the information that enabled you to color these various plats on this map which you testify you drew?

Answer. From those plats that were received in evidence in the deposition of Mr. Horace M. Adams in this case on his direct examination.

(Counsel for complainants here offers the map in evidence and it is marked "Complainants' Exhibit JJJJJ."

Counsel for defendants objects to the testimony of this witness relating to this map and to the introduction of the map as being incompetent and relating to something over which the Court of Claims has no jurisdiction, and also upon the ground that the map was prepared simply from data furnished the witness by another party, as to the correctness of which he knows nothing.)

425 11 question. You don't know where these maps were prepared or where the information was obtained by Mr. Horace Adams?

Answer. No, sir; I don't know anything about that.

12 question. I notice that this map, "Complainants' Exhibit JJJJJ," is divided up into a number of small squares and large squares; what do the small squares represent?

Answer. They represent quarter sections.

13 question. And what do the larger squares represent?

Answer. Townships.

14 question. I notice on the map a quantity of small numbers; what do they represent?

Answer. The numbers of the sections which are made up of the quarter sections.

15 question. And what do the large numbers represent?

Answer. The numbers of the townships and ranges.

16 question. How do you know that your drawing shows accurately the sections, quarter sections, townships, and ranges?

Answer. Because they were measured by scale and by comparison with the official map of the Indian Territory compiled in the Land Office of the United States Government.

ITHAMAR P. BERTHRONG.

Counsel for the defendants announces that he was not ready to go on with the cross-examination of the witness at this time, and that he will cross-examine the witness at a future day.

It is therefore stipulated between counsel that at some future day the cross examination and redirect examination may be proceeded with, and it is expressly stipulated and agreed that the cross-examination of the witness is adjourned until such time as the witness again takes the stand.

DISTRICT OF COLUMBIA, *ss:*

I, Harry H. Hollander, a notary public in and for the District of Columbia, certify that at the time and place aforesaid, Ithamar P. Berthrong, a witness on behalf of the plaintiffs in the above-entitled cause, was by me sworn before any question was put to him, to tell the truth, the whole truth, and nothing but the truth relative to the said cause, and that the answers were taken down in my presence, and his deposition, as above set forth, was read over to and signed by him before me at the time and place aforesaid.

In witness whereof I have hereunto set my hand and official seal this 3d day of January, A. D. 1901.

[SEAL.] HARRY H. HOLLANDER,
Notary Public.

Motion for a Rule upon the Honorable Secretary of the Interior.

Now come the petitioners, The Delaware Indians, residing in the Cherokee nation, *et al.*, by Walter S. Logan, their attorney, and move the court for a rule upon the honorable Secretary of the Interior, requiring him to transmit to said court, to be used in the above case, copies of the following documents in said department, to wit:

426 A letter marked "Cherokee R 46," written by W. P. Ross and others, Cherokee delegates at Washington, D. C., February 13, 1867. This letter is on file in the office of the Commissioner of Indian Affairs.

A letter entitled "Cherokee R 326," written by H. D. Reese to Hon. N. C. Taylor, Washington, D. C., July 30, 1868. This letter is on file in the office of the Commissioner of Indian Affairs.

A letter entitled "Cherokee D 53," written by Lewis Downing and others to Hon. N. C. Taylor, Washington, D. C., January 25, 1869.

This letter is on file in the office of the Commissioner of Indian Affairs.

A letter entitled "Cherokee D 253," written by Lewis Downing and others to Hon. W. T. Otto, Washington, D. C., May 5, 1869. This letter is on file in the office of the Commissioner of Indian Affairs.

A letter entitled "Cherokee J 293," together with inclosures, sent by J. D. Cox, secretary, to Hon. E. S. Parker, Washington, D. C., May 21, 1869. This letter is on file in the office of the Commissioner of Indian Affairs.

A letter entitled "Cherokee D 909," and inclosures, written by H. D. Reese and others to Hon. N. C. Taylor, Washington, D. C., January 30, 1868. This letter is on file in the office of the Commissioner of Indian Affairs.

A letter entitled "Cherokee W 686," and inclosures, written by James Wortham to Hon. N. C. Taylor, Washington, D. C., January 28, 1868. This letter is on file in the office of the Commissioner of Indian Affairs.

A letter written by the Hon. N. C. Taylor to H. D. Reese, chairman of the Cherokee delegation, written at the Department of the Interior, office of Indian Affairs, August 7, 1868. This letter is on file in the office of the Commissioner of Indian Affairs.

A letter on file in the office of the Commissioner of Indian Affairs, indorsed as follows:

"Delaware C 864, Department of the Interior. Received February 21, 1872. Dated February 21, 1872. From Captain John Connor and others, Delaware Indians. Subject: Making complaint as to their treatment by the Cherokees."

A report made by the Hon. James McLaughlin, of the Interior Department, dated about July 1, 1897, with regard to the frauds relating to the admission of freedmen into the Cherokee nation. The Hon. James McLaughlin supervised from April 18, 1897, to the month of July, the payment to the freedmen of the $900,000 which was called the Cherokee freedmen payment.

He made a report of what he did and reviewed certain frauds relating to citizenship in the Indian Territory, particularly in the Cherokee nation. This is the report to which your petitioners refer.

Dated, New York, February 4, 1899.

Respectfully, WALTER S. LOGAN,
Attorney for the Plaintiffs.

Motion for a Rule upon the Honorable Secretary of the Interior.

Now come the petitioners, The Delaware Indians, residing in the Cherokee nation, *et al.*, by Walter S. Logan, their attorney, and move the court for a rule upon the honorable Secretary of the Interior requiring him to transmit to said court, to be used in the
427 above case, copies of the following documents and the following information, to wit:

A letter marked "Delaware 1. 320," written by F. Johnson to Hon. Wm. P. Dole, dated "Delaware agency, Kansas, Sept. 13, 1863," which is on file in the office of the Commissioner of Indian Affairs.

Two letters, each marked "Delaware 1. 379," written by F. Johnson to Hon. Wm. P. Dole, dated "Delaware agency, Kansas, November 30, 1863," both of which are on file in the office of the Commissioner of Indian Affairs.

A statement giving the number of the receipts on file for the moneys disbursed by John G. Pratt, Delaware Indian agent, to the Delaware Indians, which moneys were sent to him to be paid to the Delawares in return for their Kansas land, which receipts are on file in the office of the Commissioner of Indian Affairs. Your petitioners do not seek a list of the receipts; they ask only for the number of them on file.

Dated New York, February 8, 1899.

WALTER S. LOGAN,
Attorney for the Plaintiffs.

Reply of Interior Department.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *March* 2, 1899.

The honorable Chief Justice of the Court of Claims.

SIR: Pursuant to the order of the Court of Claims, dated February 10, 1899, requesting this department to furnish said court, to be used in the case of The Delaware Indians *et al. v.* The Cherokee Nation, numbered 21139, now pending in said court, "any information or papers (or duly authenticated copies of the same, if preferred) supposed to be on file in your (this) department, set forth in the accompanying rule allowed by the court," I have the honor to transmit herewith duly certified copies of the papers on file in the office of the Commissioner of Indian Affairs, as stated by the report of said Commissioner, excepting "Delaware C 864, 1872, dated February 1, 1872, from Capt. John Connor and others, Delaware Indians, making complaint as to their treatment by the Cherokees," for the reason that the same is not on file in his office, and said letter can not be found in the files of the office of the Secretary of the Interior.

Attention is also called to the statement made by the Commissioner, giving the reason for not furnishing a number of the receipts "for moneys disbursed by John G. Pratt, Delaware Indian agent, to the Delaware Indians," which, he says, is due to the fact that the accounts of said agent are filed away in the cellar of the building in which the office of the Commissioner of Indian Affairs is located, and are inaccessible. The Commissioner also suggests that the original receipt rolls are on file in the office of the auditor for the

Interior Department and that said officer is the proper person to furnish copies thereof.

A copy of the report of the Commissioner of Indian Affairs and said order of the court are herewith inclosed.

Respectfully, E. A. HITCHCOCK, *Secretary.*

428 DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *February* 28, 1899.

The honorable Secretary of the Interior.

SIR: The office is in receipt, by department reference of the 13th instant, of two communications, dated February 10, 1899, from Mr. John Randolph, assistant clerk of the Court of Claims, requesting to be furnished with certain official papers, set forth in the accompanying rules of said court, to be used as evidence on the trial of the cause No. 21139, "The Delaware Nation *v.* The Cherokee Nation," now pending in said court.

In partial compliance with said request, I have the honor to transmit herewith duly certified copies of the following-described papers:

(1.) Letter marked "Cherokee R 46, 1867," from W. P. Ross *et al.*, Cherokee delegates, Washington, D. C., February 13, 1867.

(2.) Letter marked "Cherokee R 326, 1868," from H. D. Reese to Hon. N. C. Taylor, Commissioner of Indian Affairs, Washington, D. C., July 30, 1868.

(3.) Letter marked "Cherokee D 53, 1869," from Lewis Downing *et al.* to Hon. N. C. Taylor, Commissioner of Indian Affairs, January 25, 1869.

(4.) Letter marked "Cherokee D 253, 1969," from Lewis Downing to Hon. W. T. Otto, acting Commissioner of Indian Affairs, Washington, D. C., May 5, 1869.

(5.) Letter marked "Cherokee I 293, 1869," with inclosures from Hon. J. D. Cox, Secretary of the Interior, to Hon. E. S. Parker, Commissioner of Indian Affairs, May 21, 1869.

(6.) Letter marked "Cherokee D 909, 1868," with inclosures from H. D. Reese *et al.* to Hon. N. C. Taylor, Commissioner of Indian Affairs, Washington, D. C., January 30, 1868.

(7.) Letter marked "Cherokee W 686, 1868," and inclosures from James Wortham to Hon. N. C. Taylor, Commissioner of Indian Affairs, January 28, 1868.

(8.) Letter dated August 7, 1868, from Hon. N. C. Taylor, Commissioner of Indian Affairs, to H. D. Reese, chairman of the Cherokee delegation.

(9.) Report dated July 2, 1897, by James McLaughlin, United States Indian inspector, of his supervision of the Cherokee freedmen payment made at Fort Gibson, Ind. T., by Special Agent James G. Dickson and D. M. Wisdom, United States Indian agent, respectively.

(NOTE.—This report is on file in the office of the Secretary of the Interior.)

(10.) Letter marked "Delaware J 320, 1863," from F. Johnson, United States Indian agent, Delaware agency, Kans., to Hon. Wm. P. Dole, Commissioner of Indian Affairs, dated September 13, 1863.

(11.) Letter marked "Delaware J 379, 1863," and inclosure from F. Johnson, United States indian agent, Delaware agency, Kans., to Hon. Wm. P. Dole, Commissioner of Indian Affairs, dated November 30, 1863.

The office is unable to furnish a certified copy of the letter marked "Delaware C 864, 1872," dated February 21, 1872, from Capt. John Connor and others, Delaware Indians, making complaint as to their treatment by the Cherokees, for the reason that said letter is not in the files of this office. In its appropriate place is a memo-
429 randum setting forth that said letter was withdrawn by the Secretary of the Interior February 27, 1872.

This office is also unable to furnish "a statement giving the number of the receipts on file for moneys disbursed by John G. Pratt, Delaware Indian agent, to the Delaware Indians, which moneys were sent to him to be paid to the Delawares in return for their Kansas lands," owing to the fact that the accounts of said agent are filed away in the cellar of this building in which the office is quartered and are inaccessible. It is respectfully submitted, however, that properly the Auditor of the Treasury for the Interior Department should be called upon to furnish said list, as the original receipt rolls are on file in his office, those in this office being merely duplicates.

The communications from the assistant clerk of the Court of Claims are herewith respectfully returned, and a copy of this letter is inclosed.

Very respectfully, your obedient servant,

A. C. TONNER,
Acting Commissioner.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *February* 28, 1899.

I, W. A. Jones, Commissioner of Indian Affairs, do hereby certify that the papers hereto attached are true and literal copies of the following-described official papers as the same appear on file in this office:

(1.) Letter marked "Cherokee R. 46, 1867," from W. P. Ross *et al.*, Cherokee delegates, Washington, D. C., February 13, 1867.

(2.) Letter marked "Cherokee R. 326, 1868," from H. D. Reese to Hon. N. C. Taylor, Commissioner of Indian Affairs, Washington, D. C., July 30, 1868.

(3.) Letter marked "Cherokee D. 53, 1869," from Lewis Downing *et al.* to Hon. N. C. Taylor, Commissioner of Indian Affairs, January 25, 1869.

(4.) Letter marked "Cherokee D. 253, 1869," from Lewis Downing to Hon. W. T. Otto, acting Commissioner of Indian Affairs, Washington, D. C., May 5, 1869.

(5.) Letter marked "Cherokee I. 293, 1869," with inclosures, from Hon. J. D. Cox, Secretary of the Interior, to Hon. E. S. Parker, Commissioner of Indian Affairs, May 21, 1869.

(6.) Letter marked "Cherokee D. 909, 1868," with inclosures, from H. D. Reese *et al.* to Hon. N. C. Taylor, Commissioner of Indian Affairs, Washington, D. C., January 30, 1868.

(7.) Letter marked "Cherokee W. 686, 1868," and inclosures, from James Wortham to Hon. N. C. Taylor, Commissioner of Indian Affairs, January 28, 1868.

(8.) Letter dated August 7, 1868, from Hon. N. C. Taylor, Commissioner of Indian Affairs, to H. D. Reese, chairman of the Cherokee delegation.

(9.) Report dated July 2, 1897, by James McLaughlin, United States Indian inspector, of his supervision of the Cherokee freedmen payment made at Fort Gibson, Ind. T., by Special Agent James G. Dickson and D. M. Wisdom, United States Indian agent, respectively. (Note: This report is on file in the office of the Secretary of the Interior.)

430 (10.) Letter marked "Delaware J. 320, 1863," from F. Johnson, United States Indian agent, Delaware agency, Kans., to Hon. William P. Dole, Commissioner of Indian Affairs, dated September 13, 1863.

(11.) Letter marked "Delaware J. 379, 1863," and inclosure, from F. Johnson, United States Indian agent, Delaware agency, Kans., to Hon. W. P. Dole, Commissioner of Indian Affairs, dated November 30, 1863.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed on the day and year first above written.

[SEAL.]

W. A. JONES,
Commissioner.

ROOMS OF CHEROKEE DELEGATION,
321 9TH ST., WASHINGTON CITY, D. C., *Feb. 13th*, 1867.

Hon. Lewis V. Bogy, Commissioner of Indian Affairs.

SIR: On behalf of the Cherokee nation we represent, we herewith offer to sell to the Government all of the Cherokee lands lying west of 96° west, containing eight or nine millions of acres.

If taken in a body, we would sell all lying between 96° and 99° for fifty cents an acre, and all west of 99° at twenty cents an acre.

The lands in question lie south of the southern boundary of Kansas, north of the Creek lands and Texas boundary, and east of the eastern boundary of New Mexico and part of Texas. The lands to be conveyed on the terms of the treaty of 19th of July, 1866, and the amounts paid for them invested in United States registered bonds.

We would prefer to dispose of the whole amount in a body at a smaller price than to have it picked and culled over, but are willing to enter into any fair arrangement for settling Indians thereon.

We desire to remain, very respectfully, your ob'd't servants,

WM. P. ROSS,
Prict. Chief.

RILEY KEYS,
JESSE BUSHYHEAD,
Cherokee Delegation.

WASHINGTON, D. C., *July 30th*, 1868.

Hon. N. G. Taylor, Commissioner of Indian Affairs.

SIR: Last year (1867) an arrangement was made between the Cherokees and the Delaware Indians by which the latter were received into the Cherokee nation as Cherokees, and were to pay a certain sum of money therefor to the Cherokees, to be placed in charge of the U. S. Gov't as other Cherokee funds. You will therefore please to inform us whether or not any funds have been placed to the credit of the Cherokees on account of the said arrangement between the Cherokees and Delawares, and if so, how much?

Very respectfully, your ob't s'v't,

H. D. REESE,
Chairman Cherokee Delegation.

431 WASHINGTON, *Jan. 25th*, 1869.

Hon. N. G. Taylor, Commissioner, Indian Office, Dept. of Interior.

SIR: The undersigned respectfully call your attention to articles of agreement made April 8th, 1867, between the Cherokee nation and the Delaware tribe of Indians, and request that we may be furnished with the roll of the Delawares made Feb. 18th, 1867, by the Delaware agent, and on file in your office, together with the names of such, if any, as were added to it within one month after the conclusion of said agreement, of 8th Ap'l, 1867, being together with a list of the Delawares who elected to remove to the "Indian country," so that we may know what amount of bonds held in trust for the Delawares are to be sold or transferred at their market value for the benefit of the Cherokee nation on account of lands purchased of the Cherokee nation for said Delawares; we also desire to be furnished with a copy of the last census of the Cherokee nation, and to be informed what amount the Delawares will contribute to the Cherokee national funds under the provisions of said agreement, and what steps, if any, have been taken to have the payments made to the Cherokee nation by the sale of the Delaware trust funds, or by the transfer thereof to the Cherokee nation by the united tribes.

And if these sales or transfers have not been made, we request that you will take all necessary steps to carry into effect the said agreement of Ap'l 8th, 1867, between the Cherokee nation and the Delawares.

Trusting that our requests will, without unnecessary delay, be attended to, we avail of this opportunity to assure you of the high respect with which

We are, sir, your ob't serv'ts,

LEWIS DOWNING,
P'l Ch'f Cherokee Nation.
H. D. REESE,
W. P. ADAIR,
SAM'L SMITH,
A. SCRAPER,
J. PORUM DAVIS,
Cherokee Delegation.

WASHINGTON CITY, D. C., *May* 5, 1869.

Hon. W. T. Otto, act. Commissioner Indian Affairs.

SIR: Application having been made to us by the representatives of the Shawnee nation now in Washington for lands, under the provisions of the 15th article of the treaty of 1866 between the United States and the Cherokee nation, we would respectfully request you to detail a representative of the Indian Office to assist in making an agreement satisfactory to each of these nations and the Government of the United States.

We have the honor to remain, with respect, your obed't serv't,

LEWIS DOWNING, *P. Chief,*
H. D. REESE,
Chmn. of Delegation,
W. P. ADAIR,
Delegates Cherokee Nation.

432 DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *May* 21, 1869.

SIR: For your information I herewith transmit copy of a letter addressed by the department to W. A. Phillips, Esqr., attorney for the Cherokees, dated the 12th inst., relative to the transfer of certain stocks belonging to the Delaware tribe of Indians under an agreement made between said Indians, dated April 8th, 1867, and to which my attention was called in report from your office of the 7th ult.

I also enclose copies of a letter to W. S. Huntington, cashier of the First national bank in this city, inquiring the purchasing rates of United States bonds issued in aid of the Union Pacific R. W., E. D., his reply thereto, and my order of the 13th inst. directing the transfer upon the trust-fund books of the department at the rate offered, viz, $106\frac{3}{8}$.

As a precautionary measure I would suggest that you cause these papers to be copied upon the permanent records of your office.

In making the changes of stock upon the books of the Indian Office, you will observe particularly the provisions of the 23d art. of the treaty of July 19th, 1866, with the Cherokees, under which 50

per cent. of all moneys derived from the sale of lands are invested and credited to the "national," 35 per cent. to the "school," and 15 per cent. to the "orphan" funds.

I am, sir, very respectfully, your ob't serv't,

J. D. COX, *Secretary.*

Hon. E. S. Parker, Commissioner of Indian Affairs.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *May 12th*, 1869.

SIR: In reply to your communication of the 6th inst., you are informed that I have carefully considered the questions therein presented, and will order the transfer of stocks and payment for the land settled upon by the Delaware Indians under certain articles of agreement entered into between the Cherokee nation and the Delaware tribe of Indians on the 8th day of April, 1867, on the following terms, viz:

1st. As, by calculation, it is found that 985 Delaware Indians will require, at 160 acres each, 157,600 acres, amounting, at $1.00 per acre, to $157,600, I will credit the Cherokee national school and orphan trust funds with their proper proportion of Union Pacific R. W., E. D., U. S. issue 6 per cent. bonds, with acrued interest thereon, to such an amount as may be realized at the current market rates on the day of transfer as shall equal the price of the land. In this transfer no allowance will be made for interest claimed by you to be due upon the payment for said land.

2nd. The proportion of the number of Delawares to that of the Cherokees is as 1 to $13\frac{78}{100}$, and the whole amount of stocks which should be transferred to the Cherokee national fund from those belonging to the Delawares is $121,824.28, viz:

Nonpaying stocks	$31,862.98
Paying stocks	89,961.30
	121,824.28

433 Of the description of stock the following have been selected, as it is understood, with your assent:

Nonpaying stocks:		
Florida 7's	$6,000.00	
Louisiana 6's	4,000.00	
North Carolina 6's	21,000.00	
South Carolina 6's	1,000.00	
		$32,000.00
Paying stocks:		
Missouri 6's	2,000.00	
Union Pacific R. W. Co., E. D., U. S. issue 6's	87,824.28	
		89,824.28
		121,824.28

The nonpaying stocks and those of Missouri will be rated at their face or par value, while those of the United States issue will be turned over upon a basis furnished by the current market rates at the date of transfer.

I am, sir, very respectfully, your ob't servant,

J. D. COX, *Secretary.*

W. A. Phillips, Esq., attorney for the Cherokees, Washington, D. C.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *May 13th*, 1869.

SIR: I will thank you to inform me of the current rates of to-day for purchasing United States registered bonds issued to aid in the construction of the Union Pacific railway, eastern division.

You will oblige me by replying by letter.

I am, sir, very respectfully, your ob't servant,

GEO. T. METCALF,
Chief Clerk.

W. S. Huntington, Esq., cash'r 1st nat. bank, Washington city.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *May 13th*, 1869.

In accordance with the decision of the 12th inst., the trust-fund clerk of the department is hereby directed to make the transfer from the trust funds of the Delaware Indians to those of the Cherokee nation upon the records of the Interior Department of United States registered bonds issued to aid in the construction of the Union Pacific railway, E. D., at the rate named within, viz, $106\frac{3}{8}$.

J. D. COX,
Secretary and Trustee.

FIRST NATIONAL BANK OF WASHINGTON,
WASHINGTON, D. C., *May 13th*, 1869.

Geo. T. Metcalf, Esq., chief clerk Dept. Int.

DEAR SIR: In response to your favor of even date I would say that we will pay this morning $106\frac{3}{8}$ for U. S. bonds issued to Union Pacific R. R., E. D.

Truly, yours, W. S. HUNTINGTON.

434 WASHINGTON CITY, D. C., *January 30th*, 1868.

Hon. N. G. Taylor, Com'r Ind. Affairs.

SIR: On the 28th inst. we had the honor of laying before you our credentials as delegates representing the Cherokee nation; and the 29th we filed an application requesting the annuity funds due the Cherokee nation be turned over to the principal chief and delegation; and through Honl. Chas. E. Mix, chief cl'k of the Indian

Bureau, presented a copy of the Cherokee constitution, and the recommendation of the principal chief, upon which recommendation the undersigned delegates were confirmed by the Cherokee senate. Should any further evidence be deemed necessary as to the authority of the undersigned principal chief and delegates to order or draw from the Government, in behalf of the Cherokee nation, any and all annuities due the nation, we respectfully submit the accompanying act of the Cherokee national council and ask under its provisions that the Cherokee annuity funds be turned over to the principal chief.

We have the honor to be,
Very respectfully, your ob't serv'ts,

LEWIS DOWNING,
Principal Chief Cherokee Nation.
H. D. REESE,
ARCH. SCRAPER,
E. C. BOUDINOT,
W. P. ADAIR,
SAM'L SMITH,
J. P. DAVIS,
JAMES McDANIEL,
Cherokee Delegates.

An act authorizing the principal chief to have the Cherokee annuities paid to the nation semiannually, according to treaty stipulations.

Whereas by the 23 article of the treaty of July 19, 1866, it is provided that "all funds now due the nation, or that may hereafter accrue from the sale of their lands by the United States, as hereinbefore provided for, shall be invested in United States registered stocks at their current value, and the interest on all said funds shall be paid semiannually on the order of the Cherokee nation:" Therefore,

Be it enacted by the national council, That the principal chief be, and he is hereby, authorized to adopt such measures as may be deemed necessary, before the proper departments of the United States Government, to have the Cherokee funds turned over to the Cherokees promptly semiannually, according to the said twenty-third article of the treaty of July 19, 1866.

Tahlequah, C. N., December 12th, 1867.

JAS. McDANIEL,
President of Senate.
STEPHEN FOREMAN,
Clerk of Senate.

Concurred in.

ARCH. SCRAPER,
Speaker of Council pro Tem.
T. B. WOLFE,
Clerk of Council.

435 On reconsidering the above act the senate added the following clause, viz:

Be it further enacted, That the principal chief be, and he is hereby, required and authorized to issue or draw out the order of the Cherokee nation on the United States Government for all annuities or monies due the Cherokee nation, as provided for in the 23 article of the treaty of 1866, which order shall be deemed the order of the Cherokee nation.

Tahlequah, C. N., December 13, 1867.

CHARLES THOMPSON,
President of Senate pro Tem.
STEPHEN FOREMAN,
Clerk of the Senate.

Concurred in the amendment.

ARCH. SCRAPER,
Speaker of Council pro Tem.
T. B. WOLFE,
Clerk of Council.

Approved.

LEWIS DOWNING,
Principal Chief of the Cherokee Nation.

OFFICE OF EXECUTIVE DEPARTMENT
OF THE CHEROKEE NATION, *Dec'r* 20, '67.

This is to certify that the foregoing is a true copy of the original as on file and of record in this office.

By authority.

W. L. G. MILLER,
Executive Secretary.

WASHINGTON, D. C., *Jan.* 28, 1868.

Hon. N. G. Taylor, Commissioner Ind. Affairs.

SIR: I have the honor to transmit herewith a communication from delegates of the Cherokee nation directed to you through me, together with a transcript of the act of the Cherokee council creating said delegates and defining their powers, &c. I have to ask that the national fund due said nation, amounting to the sum of $24,719.86, be turned over by the department, if not in conflict with law and treaty stipulations, to the principal chief of the nation, Col. Lewis Downing, to enable said delegates to meet all expenses consequent upon their present mission in Washington. They have already hypothecated warrants upon their national treasury to enable them to reach the city.

Very respectfully, your ob't serv't,

JAMES WORTHAM,
Supt. Ind. Affairs.

436 An act appointing a delegation.

1. *Be it enacted by the national council*, That a delegation of seven persons be appointed to proceed to Washington city to represent the Cherokee nation and bring to a satisfactory settlement all business of the Cherokee nation with the Government of the United States, and to secure the fulfillment of all business falling under the provisions of the treaty of July 19, 1866.

2. *Be it further enacted*, That it shall be the duty of said delegation to secure back annuities due to the Cherokee nation, and payable to them by treaty and withheld during the war.

3. *Be it further enacted*, That said delegation are hereby empowered to prosecute and secure all claims for horses, provisions, and other military supplies and stores furnished the armies of the United States and remaining unpaid.

4. *Be it further enacted*, That said delegation shall have power to prosecute and secure all claims for horses, cattle, or other property taken from the citizens of the Cherokee nation, and to proceed in the Court of Claims or before any proper authority of the United States and prosecute such claims, and secure indemnification therefor.

5. *Be it further enacted*, That said delegation are empowered to make necessary arrangements with the Government of the United States, or with any tribe of Indians desiring to settle in the Cherokee country, for the settlement of the same, to consult with them or make needful arrangements, subject to the approval of the United States and the Cherokee council. Said delegation shall also have power to prosecute all claims for losses of the Cherokee people caused by the United States, or resulting from the abandonment of the Indian Territory by the United States troops, or from the want of (the) proper protection guaranteed to the Cherokees by its treaties with the United States, and to secure indemnification to its people for such losses, and to prosecute such other business as may be delegated to them by the national council.

6. *Be it further enacted*, That said delegation shall be authorized to employ an attorney, or attorneys, to aid them in the prosecution of such business as herein or (is) hereinafter delegated to them.

7. *Be it further enacted*, That said delegation shall have power to make all necessary negotiations in reference to the sale or disposal of the lands belonging to the Cherokee nation lying west of 96° west, including what is known as the Cherokee Outlet.

8. *Be it further enacted*, That said delegation be, and they are hereby allowed as compensation the sum of three dollars per day, while in actual service, exclusive of all necessary expenses while absent on their mission; and the said delegation are required to make a full report of such necessary expenses to the next annual session of the national council.

9. *Be it further enacted*, That in the event of any vacancy occurring in said delegation the principal chief is hereby authorized to fill said vacancy.

Be it further enacted, That the principal chief be authorized to accompany the delegation.

10. *Be it further enacted*, That the delegation is hereby authorized to enter into a new treaty with the Government of the United
437 States, if advisable, or (to) make any alteration in the treaty of July 19, 1866, whichever may be (the) more satisfactory.

11. *Be it further enacted*, That the principal chief is authorized to draw warrants in favor of the delegation for their services and expenses whenever it is required.

Tahlequah, Cherokee nation, December 11, 1867.

JAMES McDANIEL,
President of the Senate.
STEPHEN FOREMAN,
Clerk of Senate.

Concurred in.

ARCH. SCRAPER,
Speaker of Council pro Tem.
T. B. WOLFE,
Clerk Council.

Approved.

LEWIS DOWNING,
Principal Chief of the Cherokee Nation.

OFFICE OF THE EXECUTIVE DEPARTMENT
OF THE CHEROKEE NATION,
December 20, 1867.

This is to certify that the foregoing is a true copy of the original as on file and of record in this office.

By authority.

W. L. G. MILLER, M. D.,
Executive Secretary.

WASHINGTON CITY, *January 29th*, 1868.

Honl. N. G. Taylor, Commissioner Indian Affairs.

SIR: Herewith we have the honor of transmitting to you a copy of our instructions, entitled: "An act appointing a delegation," and which is an enactment of the Cherokee national council during its late session. You will perceive that by sections 8 and 11 of these instructions that the undersigned delegates, including the principal chief, are entitled to their *per diem* allowance and also to all necessary expenses while engaged on their mission; and are also required to make a full report of the same at the next regular session of the national council, to be convened in November next. Not being able at present to make a correct estimate as to the amount of funds required to meet the necessary wants of the delegation, because we can not know how long we may have to remain here in order to estimate our *per diem* allowance; nor do we know what other neces-

sary expense will attach to our delegation. We would therefore respectfully request that you turn over to the undersigned, principal chief and delegates of the Cherokee nation, such annuities as may be due the Cherokees since the last payment. The undersigned would further represent that it will be seen from the enclosed
438 instructions that they represent the Cherokee nation, and, as such representatives, they will endorse any proper vouchers that may be necessary for the funds called for.

Very res'fully, y'r ob't ser'ts,

LEWIS DOWNING,
Principal Chief Cherokee Nation.
H. D. REESE,
W. P. ADAIR,
SAM'L SMITH,
J. PORUM DAVIS,
JAMES McDANIEL,
E. C. BOUDINOTT,
ARCHIBALD SCRAPER,
Cherokee Delegates.

EXECUTIVE DEPARTMENT OF THE CHEROKEE NATION,
TAHLEQUAH, C. N., 16 *Dec'r*, 1867.

To the hon. the senate of the Cherokee nation.

GENTLEMEN: Pursuant to the requirements of the constitution, I have the honor to present for your confirmation the names of the following gentlemen, as a delegation to visit Washington city for the purposes named in the act passed at this session "appointing a delegation," dated Dec'r 11th, 1867. These gentlemen I recommend to your attention:

Samuel Smith, James McDaniel, Arch. Scraper, H. D. Reese, J. P. Davis (Porum), W. P. Adair, and John Brewer.

I am, gentlemen, respectfully, your most obed't se'v't,

LEWIS DOWNING,
Principal Chief of the Cherokee Nation.

The above names confirmed as delegates to visit Washington city.

JAMES McDANIEL,
President of the Senate.
STEPHEN FOREMAN,
Clerk of the Senate.

OFFICE OF THE EXECUTIVE DEPARTMENT
OF THE CHEROKEE NATION,
December 20, 1867.

This is to certify that the foregoing is a true copy of the original as on file and of record in this office.

By authority.

W. L. G. MILLER, M. D.,
Executive Secretary.

DEPT. OF THE INTERIOR,
OFFICE IND. AFFAIRS, *Aug.* 7, 1868.

H. D. Reese, chairman Cherokee delegation, present.

SIR: I am in receipt of your letter of the 30th ult., stating that an arrangement was made last year between the Cherokees and Delawares by which the latter were received into the Cherokee
439 nation, and were to pay a certain sum of money therefor to the Cherokees, to be placed in charge of the U. S. Government as other Cherokee funds, and requesting to be advised whether any funds have been so placed to the credit of the Cherokees, and if so, how much.

In reply I have to say that no portion of the funds referred to by you has been placed to the credit of the Cherokee nation. There are several things that will have to be attended to before such credit can be given. The office has not yet been officially notified of the number of Delawares who have removed to the Cherokee country, and consequently the amount of tribal funds to which those members of the Delaware nation that have removed are entitled to receive or have placed to the credit can not be determined. It is thought that legislative action will have to be had by Congress respecting the disposition of bonds held in trust for the Delawares before the arrangement in question can be completed.

When the necessary information has been received to enable the dept. to act understandingly in the premises, there will be no delay in taking proper steps to have the matter definitely settled.

Very resp'y, your ob't serv't.

N. G. TAYLOR, *Com'r.*

DEPARTMENT OF THE INTERIOR, WASHINGTON,
FORT GIBSON, INDIAN TERRITORY, *July 2nd*, 1897.

The honorable the Secretary of the Interior, Washington, D. C.

SIR: I have the honor to submit the following report upon my supervision of the Cherokee freedmen payment, made at Ft. Gibson, Indian Territory, by Special Agent James G. Dickson, and Indian Agent D. M. Wisdom, respectively.

Under telegraphic instructions of April 1st, 1897, received by me at Valentine, Nebraska, I proceeded to Ft. Gibson, where I arrived on Wednesday morning, April 7th, and found Agent Dickson and his clerical force occupying quarters in the old military post at Ft. Gibson, about one mile north of the business portion of the town. Agent Dickson had arrived on Sunday, April 4th, but had not, up to the time of my arrival, determined upon a place to make the payment, and was absent when I arrived looking over the country at a point about four miles east of Ft. Gibson, known as "Four Mile Branch."

It was common rumor and generally believed that Agent Dickson had made this move to give the impression that he was going outside of the town to make the payment, where the crowd of freedmen

and others would follow him and go into camp, and thus seriously affect the business interests of Ft. Gibson merchants and others who had made calculations upon a large trade during the payment. This in order to have the residents of Ft. Gibson to raise a fund to have the payment made close to their business interests. In this connection see affidavit of W. P. Ross, herewith enclosed, and marked "Exhibit No. 1."

Upon Agent Dickson returning from Four Mile Branch, and finding that an inspector had arrived to supervise the disbursement, he concluded to make the payment in one of the old buildings of the military post, where he had taken up quarters for himself
440 and clerks, adjacent to which the troop of cavalry (guard for paymaster) had gone into camp.

As it appeared to me, after having been a few days on the ground, Agent Dickson was unnecessarily delaying opening of payment. He arrived on April 4th and did not commence paying until April 13th, and then only paid a few persons each day, giving one reason or another as causes for delay; and he did not make any payment for several days at a time.

It is true that the rolls were poorly prepared, in consequence of which considerable difficulty was experienced, in the proper identification of beneficiaries, but he made this appear greater than it really was, thus delaying payment and unreasonably prolonging the work, and which could be reasoned out only on the theory that he had some ulterior motive for protracting the payment—one of which impressed me was a desire to continue his son in service as long as possible, he being employed as one of the clerks at $3.00 per day and expenses. He had consumed about nine weeks at Hayden, making first half of this payment, and was four weeks at Fort Gibson disbursing about $122,000.

Reports and common rumor charged Agent Dickson of forcing collectors (creditors of beneficiaries) to each pay one dollar per day for daily lists of the freedmen paid; and that the money thus taxed collectors, and paid in by them, was for Dickson. Be this as it may, daily lists were furnished, as above stated, to collectors by Dickson's clerks, and money paid them for same, but it is impossible to prove that Dickson received any of the money himself.

There were numerous other rumors regarding Dickson favoring certain creditors and persons who were trying to negotiate certain concessions for a consideration—one of which concessions was a privilege that would be given collectors (who were held outside of line, out of sight of the pay house) to occupy a building directly opposite the pay house and only about 50 yards distant, where they could see all persons as they left the pay house, provided they paid two per cent. of their collections, or a lump sum of $1,800.

A number of the collectors were in favor of making up the required sum for the desired privileges; but others objected, saying that if they had a right to move up to said building by paying for it they had a right to do so without, and while the proposition was under consideration by the collectors F. M. Crowell, of Afton, Indian

Territory, a warm personal friend of Agent Dickson, with whom negotiations were being conducted, got drunk and continued on a spree for several days, during which time the collectors become disgusted and a deal was not consummated. In this connection I invite attention to affidavit of W. M. Kimball, herewith inclosed. (Exhibit No. 2.)

After holding the collectors back at the point first established for about three weeks, Dickson gave them permission to move up to the building above referred to. In the meantime he left the work of identification of beneficiaries and payment chiefly to his clerks, he signing the checks in blank, and was seldom in the pay house while payment was being made, and, as explained by himself, was usually to be found down town, or mingling with the crowd running down some scheme he had heard of as about to be sprung upon him or against him, and was frequently to be found in heated argument with collectors or freedmen.

Very few persons could get a civil answer from Agent
441 Dickson, and never any satisfaction, as his course throughout, from the time of my arrival at Ft. Gibson, and coming under my observation, was vacillating and misleading. He frequently misrepresented matters to me, particularly regarding the decision of Judge Springer, of the U. S. district court of the northern district of the Indian Territory, and regarding his arrangement with F. B. Severs, of Muskogee, Indian Territory, to issue two checks in all the mandamus cases, giving F. B. Severs one check for the amount due him from beneficiary, and the other direct to freedmen. Said Severs and his manager being allowed to sit at the pay table, and thus collect their accounts against beneficiaries, thus becoming favored creditors, and making the Government official collector for Severs in each case.

And as soon as I discovered what was about to be attempted I proceeded to Muskogee to consult with U. S. district attorney, as to the legality of writs issued by Judge Springer, at which time I sent my telegram of May the 3rd reporting same.

Since my return to the Indian Territory I have met said F. B. Severs frequently, and, in reply to certain questions regarding Dickson's conduct of the freedmen payment, he told me in presence of U. S. District Attorney Soaper that he had agreed with Dickson to pay him $3,000 after the freedmen payment was completed, provided he (Dickson) would make two checks for the beneficiaries indebted to Severs, one covering their indebtedness to Severs and the other for the remainder of their respective shares or family claims; and that it was upon this understanding that Dickson commenced payment by issuing two checks during my absence in Muskogee on May the 3rd, 1897.

Capt. Severs said that he had not paid Dickson any money, and would not pay him anything in advance, but agreed to give $3,000 after payment was closed. He further stated that Dickson asked him how much he (Severs) would give him (Dickson) if he arranged to thus secure Severs in his outstanding accounts against the freed-

men, and that he (Severs) offered Dickson $2,500, but that Dickson demanded $3,000, which he (Severs) finally consented to, but as the payment was suspended after only six of his debtors had been thus paid he (Severs) regarded the deal off, and did not pay Dickson anything.

It would be difficult, and could hardly be expected, to get Capt. Severs to make affidavit to the foregoing statement made by him regarding Dickson, but I believe it to be true, as also does the U. S. district attorney, Soper, and I submit it to show the manner in which Agent Dickson conducted the payment; also showing that my suspicions were well founded and recommendation of suspension of payment by him as fully justified.

Agent Wisdom commenced payment of the remaining portion of Cherokee freedmen fund on Thursday, June 10, and closed the rolls yesterday, July 1st, after all persons had been paid, who appeared for payment, except a few whose status or enrollment were such as to make it unsafe for him to pay them from the liability of the items being suspended in the settlement of his accounts.

There was $262,359.87 of the Cherokee freedmen fund unexpended when payment was suspended by Agent Dickson, and this sum was placed to Agent Wisdom's official credit in five installments. There were 1,390 unpaid shares shown on the abstract roll furnished Agent Wisdom for payment, of which he paid 1,222 shares, aggre-
442 gating $228,763.17 disbursed by him, thus leaving an unexpended balance of $33,596.70 to be returned to the U. S. Treasury, less the expense incurred by Agent Wisdom in payment of clerks, rent of room, etc., in making the payment, which expense he has been authorized to pay out of said fund.

Agent Wisdom conducted the payment in a straightforward, businesslike manner, and to the entire satisfaction of all persons concerned. The payment consumed only 14 days actually engaged in the work, five days being lost waiting for receipt of funds, which with three Sundays made eight days that no payments could be made.

He had an efficient corps of clerks, and the disbursements were made as expeditiously as prudence and care in identification of claimants justified.

It will thus be seen that the entire payment of Cherokee freedmen might have been made in forty days had Agent Dickson conducted it properly, instead of having it dragging along for nearly five months.

It has resulted in being detrimental to the freedmen rather than a benefit, many of them having followed the payment, carousing and dissipating since its commencement, thus neglecting their fields and abandoning their homes during the period of the entire five months last past.

There are about twenty of the beneficiaries in penitentiaries outside of the Indian Territory who, not being able to appear in person, could not be paid by Agent Wisdom. Also about twenty others, whose enrollment and status, as hereinbefore stated, was such as to

make it unsafe for Agent Wisdom to pay, but they can be paid direct from Washington upon their respective applications by sending their checks to the agent of Union agency, Indian Territory, or to the postmaster of their respective districts.

A few claimants refrained from drawing their shares, from the fact that they owed more than their shares amounted to, and there were several U. S. deputy marshals in the immediate vicinity outside the pay-ground limits who were provided with writs of replevin issued by U. S. district court, requiring them to turn their respective checks over to the marshals as soon as they passed outside the pay-ground limits. Such claimants can also be paid from Washington.

There are 168 shares shown on the rolls as remaining unpaid, ninety-six of which are duplications, which aggregate $18,120.00, and which amount, if it can legally be done, might be divided *pro rata* among those who were omitted from the Cliffton roll who were rightfully entitled to enrollment, and whose application for enrollment have recently been forwarded by certain attorneys and are now on file in the Indian Office.

It is doubtless a fact that the so-called Cliffton roll is very imperfect. It was prepared by William Cliffton, of Georgia; Robert H. Kern, of St. Louis, Missouri, and William B. Thompson, of Indian Territory, the latter being a member of Cherokee nation, and represented their interest. It is also doubtless a fact that a number of persons having no legal right to enrollment were placed upon said Cliffton roll, and a number who were legally entitled to enrollment were left off. In this connection see affidavit of Daniel Vann, herewith inclosed. (Exhibit No. 3.)

Agent Wisdom and clerks left for Muscogee, his home, last evening after closing the rolls. I leave to-night for Pine Ridge
443 agency, South Dakota, as directed by department letter of 25th ultimo, and expect to reach there Monday or Tuesday next.

I am, sir, very respectfully, your obedient servant,

JAMES McLAUGHLIN,
U. S. Indian Inspector.

EXHIBIT No. 1.

[Post Publishing Company, W. P. Ross, editor.]

FORT GIBSON, I. T., *May* 6, 1897.

This is to certify that on or about the 7th day of April Special Agent Dickson called at my office and said he was thinking strongly of moving the payment from the town of Ft. Gibson to my premises, which is about 1½ miles east of the town. Dickson asked me if I had figured on what the payment would be worth to me if located on my land. I told him several hundred dollars, I suppose. Dickson then said if he moved the people would follow him, and it

would make me a good deal of money, and that he might move out on my place. I offered him my house and premises free of charge if I would be allowed to collect rent from the public wishing to do business on my land.

Agent Dickson stated he wished this conversation to be private or confidential, as we were alone in my office.

Had I known Dickson as well as I do now, I have no doubt but what I could have induced him to make payment on my premises.

WM. P. ROSS,
Editor Post.

Subscribed and sworn to before me at Fort Gibson, Ind. Ter., this 6th day of May, 1897.

JAMES McLAUGHLIN,
U. S. Indian Inspector.

EXHIBIT No. 2.

UNITED STATES OF AMERICA, }
Indian Territory, Northern District. }

Personally appeared before me, M. O. Ghormley, a notary public for the State and district afore named, W. M. Kimbal, who, after being duly sworn, deposeth and saith that while J. G. Dickson, special disbursing agent of the Cherokee freedmen, was paying the money out at Ft. Gibson, C. N., and during the month of April, 1897, we, the creditor, were notified that there was a line, which was called the "dead line," which we *was* not allowed to cross while the payment was in progress, and which line was about three hundred yards from the pay house and out of sight. One man by the name of F. M. Crowell said to me that it was arranged that if we would give two per cent. of the amount of the freedmen's indebtedness that we could have the privilege of coming to a building which was about fifty yards from the pay house. I talked with several about it, and they thought that it was too much, and finally he (Mr. F. M. Crowell) said we could have it for eighteen hundred dollars. 444 We could not raise the money, therefore the trade was not consummated. My age is 73 years and post address is Howard, Kansas.

W. M. KIMBALL.

Subscribed to and sworn before me this the 8th day of May, 1897.
[SEAL.] M. O. GHORMLEY,
Notary Public, Northern Dist., I. T.

EXHIBIT No. 3.

Daniel Vann, being first duly sworn, deposes and says that he is 72 years of age, a Cherokee freedman, and resides at Fort Gibson, Indian Territory; that during the summer of 1896, when the Chero-

kee freedmen roll was being prepared by Messrs. Clifton, Kern, and Thompson, deponent was approached by J. Milton Turner, a colored attorney of St. Louis, who accompanied said commission, who demanded from deponent ten (10) dollars for himself and each member of his family to have them enrolled; that deponent refused to do so from the fact that he was on the authenticated Cherokee freedmen roll of 1880, being No. 485 thereon, and his wife, four children, and wife's mother follow in consecutive order, all of whom, a total of seven (7) person were omitted from said Clifton, Kern, and Thompson roll. Deponent further swears that said J. Milton Turner, failing to get his consent to pay ten dollars each to have himself and family enrolled, sent several persons to deponent advising him to consent to such payment, and that said J. Milton Turner sent some other parties to deponent to appear as a witness and give testimony under oath that certain parties, one George Vann, was deponent's brother and entitled to enrollment; that deponent would not give such testimony and refused to do so, knowing that said George Vann was not a Cherokee freedman; that notwithstanding this fact said George Vann was enrolled on said Clifton, Kern, and Thompson roll, and has drawn money on said roll as a Cherokee freedman beneficiary. Deponent further swears that he knows of no other reason why he and his family should have been omitted from said roll, except that he refused to pay, or agree to pay, said J. Milton Turner ten (10) dollars each for having deponent and family enrolled and refusing to make false statements which would have enabled said J. Milton Turner to have other colored persons enrolled; and further deponent saith not.

DANIEL (his x mark) VANN.

Witness to signature:
J. G. GALBRAITH, U. S. A.

Subscribed and sworn to before me at Fort Gibson, Ind. Ter., this 1st day of July, 1897.

JAMES McLAUGHLIN,
U. S. Ind. Inspector.

DELAWARE AGENCY, KANSAS, *Sept'r 13th*, 1863.

SIR: The Delaware chiefs are anxious to know at what time John Ross, chief of the Cherokees, will return home. In the event
445 of his not returning they wish (if it can be done) him to delegate some person to cede a part of their country. The Delawares wish that portion of the Cherokee country adjoining the State of Kansas, twelve miles wide by fifteen long, lying on the Verdigris. They ask that you use your influence with the Cherokees to secure that portion of the Cherokee country for them.

Please write immediately at what time Mr. Ross will return, as the Delawares are anxious to visit the Cherokees.

Very respectfully, your ob't serv't,

F. JOHNSON, *Ind. Agent.*

Hon. Wm. P. Dole, Com'r of Ind. Aff'rs.

DELAWARE AGENCY, KANSAS, *November 30th*, 1863.

SIR: I am instructed by the Delaware chiefs to inform you that they have visited the Cherokee country with a view of looking out a new home. They request me to say to you that they are well pleased with that part of the country which they visited and are willing to accept it as their future home. They desire that the Government purchase for them of the Cherokees a tract of country on Cary creek, commencing at a point on the line dividing the State of Kansas from the Cherokee country, five miles east of said creek, running west with said line fifteen miles, thence south thirty miles, thence east fifteen miles, thence north thirty miles, to the place of beginning.

At the time of their visit they could not purchase land as there was no authorized power in the Cherokee country to make treaties or to dispose of any part of their lands. Having full faith and confidence in the ability and justice of the Government of the United States, they desire that the Government purchase for them the tract of country designated, and will be satisfied with the purchase made in their behalf. Should the Government succeed in making the purchase for them they are willing to make a treaty and sell their lands in Kansas and remove. In doing so they hope to acquire a permanent home. The Delawares are solicitous that the purchase be made as soon as practicable.

Very respectfully, your ob't serv't,

F. JOHNSON, *Ind. Agent.*

Hon. Wm. P. Dole, Com's'r of Ind. Aff'rs, Washington city, D. C.

DELAWARE AGENCY, KANSAS, *November 30th*, 1863.

SIR: I have the honor of forwarding a letter written at the request of the chiefs and councilors of the Delaware tribe of Indians. The country selected is about twenty miles west of the Verdigris and is very desirable. It is equal if not better than their present location in Kansas. You will see that they are avaricious and ask you to purchase, by the boundaries set forth, about 296,000 acres, which would be over two hundred acres *pr. capita*, including near two hundred Delawares who reside in the south, but who will again join the tribe provided the Delawares remove to the Cherokee country. Should the department consider the am't of land too large I think the Delawares would be satisfied with the am't of land that you may designate, and I think will be satisfied with a reservation ten by twenty miles in size.

446

The Delawares expect to be invited to Washington for the purpose of making a treaty. If it is the wish of the department to make it in Washington, or if the department think it preferable, I think I would have no difficulty in making a treaty that would meet the approval of the Government, and the Indians could then visit Washington to urge the ratification.

Your ob't serv't,

F. JOHNSON, *Ind. Agent.*

Hon. Wm. P. Dole, Com's'r of Ind. Affairs.

Motion for a Rule upon the Honorable Secretary of the Interior.

Now come the petitioners, the Delaware Indians, residing in the Cherokee nation, *et al.*, by Walter S. Logan, their attorney, and move the court for a rule upon the honorable Secretary of the Interior, requiring him to transmit to said court, to be used in the above case, copies of the following documents in said department, to wit:

A letter marked "Delaware C 685," written by Captain John Connor and others to Hon. William P. Dole, from Leavenworth, Kans., February 9, 1864.

A letter marked "Delaware I 471," written by F. Johnson, Indian agent, at Delaware agency, Kans., March 10, 1864, to Hon. William P. Dole.

A letter marked "Delaware G 485," written by F. Johnson, Indian agent, at Delaware agency, Kans., March 21, 1864, to Hon. William P. Dole.

The order of the President on the subject of the lands of the Cherokee Indians in the Indian Territory west of the ninety-sixth degree west longitude, dated June 23, 1879, which order approved the action of the Secretary of the Interior conveyed to the President by letter dated June 19, 1879, in appraising and fixing the value of certain lands ceded by the Cherokee Indians to the United States to be used in the settlement of friendly Indians, as follows:

Lands lying west of ninety-sixth degree west longitude in Indian Territory, embracing an area of 230,014.04 acres, at 70 cents per acre.

All other lands ceded by the Cherokees in the treaty of 1866, article 16, embracing an area of 6,344,562.01 acres, at 47.49 cents per acre.

Feb. 23, 1899.

WALTER S. LOGAN,
Attorney for Plaintiffs.

Motion for Rule upon the Honorable Secretary of the Interior.

Now come the petitioners, The Delaware Indians, residing in the Cherokee nation, *et al.*, by Walter S. Logan, their attorney, and move the court for a rule upon the honorable Secretary of the In-
447 terior, requiring him to transmit to said court, to be used in the above case, copies of the following documents in said department, to wit:

A letter marked "Delaware A 778," written at the office of the superintendent of Indian affairs, St. Joseph, September 2, 1864, by W. M. Albin to Hon. William P. Dole.

A letter marked "Delaware A 778," written at the Delaware reserve, Kansas, August 29, 1864, by John G. Pratt to Hon. William P. Dole.

A letter marked "Delaware M 589," written at the office of the superintendent of Indian affairs at Atchison, August 25, 1886 [1866], by Thomas Murphy to Hon. D. N. Cooley.

A letter marked "Delaware M 689," written at the office of the United States agency for the Delaware Indians, Delaware reserve, Kansas, August 21, 1866, by John G. Pratt to Thomas Murphy, Esq.

A letter marked "Delaware M 689," written at the office of the United States agency for the Delaware Indians, Delaware reserve, Kansas, May 5, 1866, by Captain John Connor and others to Thomas Murphy, Esq.

A letter marked "Delaware M 229, 689," written at the Delaware council house, August 17, 1866, by John Connor and another to John G. Pratt.

A letter marked "Delaware M 646," [746], written at the office of the superintendent of Indian affairs at Atchison, September 24, 1866, by Thomas Murphy to Hon. D. N. Cooley.

A letter marked "Delaware M 746," written at the Delaware council house, Kansas, September 16, 1866, by R. J. E. Journeycake to J. G. Pratt.

A letter marked "Delaware M 646" [746], written at the Delaware agency, Kans., September 17, 1866, by John G. Pratt to Thomas Murphy, Esq.

A letter written at Washington, D. C., March 14, 1874, by D. W. Bushyhead to Hon. E. P. Smith, Commissioner of Indian Affairs.

A letter written at the Department of the Interior, Office of Indian Affairs, Washington, D. C., May 15, 1874, by Hon. Edward P. Smith, Commissioner, to D. W. Bushyhead, said letter being in answer to the letter written to Hon. E. P. Smith by D. W. Bushyhead, March 14, 1874.

Your petitioners desire that with the said letter from Hon. Edward P. Smith to D. W. Bushyhead there shall be furnished the following statements referred to in said letter:

A. "No. 3. Statement of funds derived from the sale of lands in the Cherokee country to the Osages, under the sixteenth article of the treaty of July 19, 1866, and the disposition thereof."

B. "No. 5. Statement of the amount paid by the Delawares to the Cherokees for lands and an interest in funds per agreement between said Indians dated April 8, 1867."

Dated New York, March 7, 1899.

WALTER S. LOGAN,
Attorney for Plaintiffs.

448 *Reply of Interior Department.*

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *April* 10, 1899.

The honorable Chief Justice of the Court of Claims.

SIR: Pursuant to the order of the Court of Claims, dated March 21, 1899, requesting this department to furnish said court, to be used

in the case of Delaware Indians, *et al.*, *v.* The Cherokee Nation (No. 21139), now pending in said court, "any information or papers (or duly authenticated copies of the same, if preferred), supposed to be on file in your (this) department, set forth in the accompanying rule allowed by the court," I have the honor to transmit herewith duly certified copies of the papers on file in the office of the acting Commissioner of Indian Affairs, as stated by the report of said acting Commissioner. Attention is called to that portion of the report which shows that (A) No. 3 and (B) No. 5 were taken from a privately printed document in the possession of the Office of Indian Affairs, but in the belief of the acting Commissioner they are true copies of the originals of said statements, which were transmitted by the Indian Office to Mr. Bushyhead without retaining official copies.

A copy of the report of the acting Commissioner of Indian Affairs and said order of the court are herewith returned.

Respectfully, E. A. HITCHCOCK, *Secretary.*

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *April* 7, 1899.

The honorable the Secretary of the Interior.

SIR: I have the honor to acknowledge the receipt of your letter dated March 24, 1899, transmitting an order dated the 21st ultimo from the Court of Claims, requesting certain papers (or authenticated copies thereof) to be used as evidence in the case of The Delaware Indians *vs.* The Cherokee Nation (No. 21139).

Agreeably with your direction and in compliance with the request contained in the order of said court, I transmit herewith duly certified copies of the following official papers and documents:

(1.) Letter marked "Delaware C 685," dated February 9, 1864, from Captain John Connor *et al.* to Hon. Wm. P. Dole, Com'r of Indian Affairs.

(2.) Letter marked "Delaware J 471," dated March 10, 1864, from F. Johnson, U. S. Indian agent, Delaware agency, Kansas, to Hon. Wm. P. Dole, Com'r of Indian Affairs.

(3.) Letter marked "Delaware J 485," dated March 21, 1864, from F. Johnson, U. S. Indian agent, Delaware agency, Kansas, to Hon Wm. P. Dole, Com'r of Indian Affairs.

(4.) Executive order dated June 23, 1879, approving the action of the Secretary of the Interior in appraising certain lands west of the 96° west longitude ceded by the Cherokees to the United States to be used in the settlement of friendly Indians.

(5.) Letter marked "Delaware A 778," dated September 2,
449 1864, and one enclosure, from W. M. Albin, sup't Indian affairs, St. Joseph, Mo., to Hon. Wm. P. Dole, Com'r of Indian Affairs.

(6.) Letter marked "Delaware M 689," dated August 25, 1866, and four enclosures, from Thomas Murphy, sup't Indian affairs, Atchison, Kansas, to Hon. D. N. Cooley, Com'r of Indian Affairs.

(7.) Letter marked "Delaware M 746," dated September 24, 1866, and two enclosures, from Thos. Murphy, sup't Indian affairs, Atchison, Kansas, to Hon. D. N. Cooley, Com'r of Indian Affairs.

(8.) Letter marked "Cherokee B 360," dated March 14, 1874, from D. W. Bushyhead to Hon. E. P. Smith, Com'r of Indian Affairs.

(9.) Letter dated May 15, 1874, from Hon. E. P. Smith, Com'r of Indian Affairs, to D. W. Bushyhead, with copies of following statements:

(A.) "No. 3. Statement of funds derived from the sale of lands in the Cherokee country to the Osages, under the sixteenth article of the treaty of July 19, 1866, and the disposition thereof."

(B.) "No. 5. Statement of the amount paid by the Delawares to the Cherokees for lands and an interest in funds, per agreement between said Indians, dated April 8, 1867."

(NOTE.—The copies of statements Nos. 3 and 5 were taken from a privately printed document in the possession of this office. They are believed, however, to be true copies of the originals of said statements which were transmitted to Mr. Bushyhead by this office without retaining official copies.)

Very respectfully, your obedient servant,

A. C. TONNER,
Acting Commissioner.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *April* 7, 1899.

I, A. C. Tonner, acting Commissioner of Indian Affairs, do hereby certify that the papers hereto attached are true and literal copies of—

(1.) Letter marked "Delaware C 685," dated February 9, 1864, from Captain John Conner *et al.* to Hon. Wm. P. Dole, Com'r of Indian Affairs.

(2.) Letter marked "Delaware J 471," dated March 10, 1864, from F. Johnson, U. S. Indian agent, Delaware agency, Kansas, to Hon. Wm. P. Dole, Com'r of Indian Affairs.

(3.) Letter marked "Delaware J 485," dated March 21, 1864, from F. Johnson, U. S. Indian agent, Delaware agency, Kansas, to Hon. Wm. P. Dole, Com'r of Indian Affairs.

(4.) Executive order dated June 23, 1879, approving the action of the Secretary of the Interior in appraising certain lands west of the 96° west longitude ceded by the Cherokees to the United States to be used in the settlement of friendly Indians.

(5.) Letter marked "Delaware A 778," dated September 2, 1864, and one enclosure, from W. M. Albin, sup't Indian affairs, St. Joseph, Mo., to Hon. Wm. P. Dole, Com'r of Indian Affairs.

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Atchison, Kansas, to Hon. D. N. Cooley, Com'r of Indian Affairs.

450 (7.) Letter marked "Delaware M 746," dated September 24, 1866, and two enclosures, from Thos. Murphy, sup't Indian affairs, Atchison, Kansas, to Hon. D. N. Cooley, Com'r of Indian Affairs.

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(NOTE.—The copies of statements Nos. 3 and 5 were taken from a privately printed document in the possession of this office. They are believed, however, to be true copies of the originals of said statements which were transmitted to Mr. Bushyhead by this office without retaining official copies.)

As the same appear on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed on the day and year first above written.

[SEAL.]

A. C. TONNER,
Acting Commissioner.

LEAVENWORTH, KANSAS, *Feb.* 9, 1864.

Hon. Wm. P. Dole, Comm., &c.

SIR: You will recollect at our interview last Sept. it was an understanding that we should go south and look at a section of country unoccupied and ascertained whether it would be suited for our people. As arranged, we did go and make such examination. The portion of country selected as best suited, we understand, belongs to the Cherokees. John Ross was at the time and is now in Washington and knew of our visit, and you have no doubt had frequent interview with him on this subject, but no official notice has as yet reach us to what you wish or what the Cherokees will do. We have been long waiting for some word from you in regard to this, to us, important business. Will you have the goodness to let us hear soon as convenient what may be expected?

We also notice that a portion of our people are holding frequent councils and are writing to and receiving answers from you, until

we have become at last desirous of learning whether this work is of an action after a while to have hearing in our national business.

CAPT. JOHN CONNOR.
CAPT. SARCOXIE.
CHAS. JOURNEYCAKE.
JAMES CONNOR.
ANDREW MILLER.
JAMES KETCHUM.
BIG RACCOON.
WM. ADAMS, *Clerk*

451 DELAWARE AGENCY, KANSAS, *March 10th*, 1864.

SIR: In the first of November I addressed a letter to you stating that I had visited the Cherokee country with a delegation of Delawares for the purpose of selecting a future home to remove to; that they were well pleased with the country and were willing to remove there, provided they could secure a portion of that country.

On the 30th November I wrote to the department, at the request of the chiefs to the same purport, and desiring you to purchase a portion of that country for them, as the head chief of the Cherokees, Mr. Ross, was in Washington city and no person in the Indian country empowered to make treaties. I have not received an answer to either of my letters. Some two or three weeks since the Indians addressed you a letter on the same subject, a copy of which they have shown me.

The Delawares are willing to make a treaty, provided they have a country secured to remove to. A majority of them prefer going South to the Indian Territory and prefer that portion owned by the Cherokees. A small portion, a minority controlled by Ben Simon, wish to emigrate to Idaho or Washington Territory.

I think a treaty might be made with the Delawares, giving them the privilege of remaining on their present reservation until peace is restored to the country or the Government guaranteeing protection in their new homes. They would be willing to sell their lands at their appraised value, they having an equal voice in appointing or choosing the appraisers, or they would be willing for their lands to be sold to the highest bidder, not recognizing the rights of squatters at the sale.

The Delaware lands are the most desirable of any in Kansas and are daily increasing in value, a fact that the Indians fully understand, and the longer a treaty is deferred the more difficult it will be to consummate it.

That the Delaware reservation is a detriment and an injury to the county will be conceded by all acquainted with the facts. Three-fourths of Wyandotte county is composed of Indian lands not sub-

ject to taxation. The interests of this country demand that the lands should be open for settlement and subject to taxation.

Very respectfully, your ob't serv't,

F. JOHNSON,
Indian Agent.

Hon. Wm. P. Dole, Commissioner of Ind. Aff'rs, Washington city, D. C.

DELAWARE AGENCY, KANSAS, *March 21st*, 1864.

SIR: I am requested by the chiefs of the Delaware tribe of Indians to inform you that they received your letter stating that John Ross, head chief of the Cherokees, will shortly visit the Delawares in Kansas on his way home to the Indian country, and that the Delawares will be enabled to purchase land of the Cherokees.

If Mr. Ross has not the power to consummate a treaty, *and it is necessary for the Delawares to visit the Indian Territory for that purpose*, they wish to know if they can have the privilege of doing so.

Also whether they can have the privilege of making an ap-
452 propriation to pay the expenses of the trip, and also whether you will permit me to go with them.

Very respectfully, your ob't serv't,

F. JOHNSON, *Ind. Agent.*

Hon. Wm. P. Dole, Com'r of Ind. Affairs, Washington city.

The action of the Secretary of the Interior as conveyed to me by letter dated the 19th instant in appraising and fixing the value of certain lands ceded by the Cherokee Indians to the United States to be used in the settlement of friendly Indians as follows:

Lands lying west of 96° west longitude in Indian Territory, set apart under act of April 10, 1876 (19 Stats., 29), as a portion of the reservation for the Pawnee Indians, embracing an area of 230,014.04 acres at 70 cents per acre.

All other lands ceded by the Cherokees in the treaty of 1866, article 16 (14 Stats., 804), embracing an area of 6,344,562.01 acres at 47.49 cents per acre, is hereby approved and ratified as my act. Under the act of May 29, 1872.

R. B. HAYES.

Executive Mansion, June 23rd, 1879.

OFFICE SUPT. IND. AFFAIRS,
ST. JOSEPH, *Sep. 2d*, 1864.

SIR: I have the honor herewith to transmit a letter from Agent Pratt of the 29th ulto., urging a speedy remittance of the Delaware annuity, and also requesting that the amount paid for exploring the Cherokee country last season may be refunded to the Delaware nation.

Very respectfully, your ob't serv't,

W. M. ALBIN,
Supt. Ind. Aff'rs.

Hon. Wm. P. Dole, Commissioner, Washington, D. C.

DELAWARE RESERVE, KAN., *Aug.* 29, 1864.

Hon. Wm. P. Dole, Com'r, &c.

SIR: At a recent session of the Delaware council they instructed me to ask that the annuity to be paid the nation be forwarded at as early a date as possible. The high cost of living and a failure of some part of the crops render it a matter of importance that this aid be at hand seasonably that they may make preparations for the winter.

They ask to have returned to them this autumn the money used by the party which went to explore the Cherokee country last season. The am't they understand to be $786.

They are particular*ly* that the payment be made as large as possible in view of their increased expenses. There seems to be an impression that if the interest due on the sale of their trust lands is included the am't to be received will — greatly increased.

453 It was also asked, would the acc't be taken of stolen stock and are they to examine their new home this autumn?

Very respectfully, y'r ob't s'v't,

JOHN G. PRATT,
U. S. Ind. Ag't.

Hon. Wm. P. Dole, Com'r, etc., Washington, D. C.

OFFICE SUPT. IND. AFF'RS,
ATCHISON, *Aug't 25th*, 1866.

SIR: I have the honor herewith to transmit a letter from Ag't Pratt of the 21st inst., enclosing a letter from the Delaware chiefs, asking when they will be permitted to select a home for the people, and enclosing copy of a letter from the same dated the 5th May on the same subject.

The original of the letter was forwarded by me to the department on the 8th May with recommendation that their request be granted. I beg leave to call your attention to this subject and again recommend that a delegation of the Delawares may be permitted to visit the southern country at an early day to select suitable homes for their people.

Very respectfully, your ob't serv't,

THOS. MURPHY,
Supt. Ind. Aff'rs.

Hon. D. N. Cooley, Commissioner, Washington, D. C.

OFFICE OF THE U. S. AGENCY
FOR THE DELAWARE INDIANS,
DELAWARE RESERVE, KAS., *August* 21, 1866.

SIR: I enclose a communication (copy) signed by the chiefs of the Delaware Indians and forwarded to your office May 5th, 1866, upon the subject of sending a delegation to the southwest for the purpose of selecting a new reserve, etc.

The necessity of such action upon their part at the present time is more apparent and they desire that the request when made be repeated, which I accordingly do, and recommend that permission be granted at an early day. I enclose also a communication from the chiefs under date Aug. 17, 1866, upon which my action has been predicated.

Very respectfully, JOHN G. PRATT,
United States Ind. Agent.

To Thomas Murphy, Esq'r, supt. Ind. aff'rs, Atchison, Kansas.

OFFICE OF THE U. S. AGENCY
FOR THE DELAWARE INDIANS,
DELAWARE RESERVE, KAS., *May 5th*, 1866.

SIR: In view of the ratification of our treaty at no distant day, we would respectfully ask your department for permission to send a delegation to the southwest for the purpose of acquiring a new reservation, and, if in your judgment deemed advisable, make
454 such selection and enter upon the preliminary arrangements (subject to the approbation of your office) as will ultimately secure the object desired. We apprehend in the general exodus of the Indians from this State that good and suitable locations will be difficult to be had, and therefore request that you indicate the region of country that we may be permitted to examine, and that we may be informed at an early day of the wishes of your office in this regard.

Very respectfully,
CAPT. JOHN CONNOR, *Principal Chief.*
" SAR COXIE, *Ass't Chief.*
CHARLES JOURNEYCAKE,
Ass't Chief.

To Thomas Murphy, Esq., supt. Ind. aff'rs, Atchison, Kas.

DELAWARE COUNCIL HOUSE, *Aug. 17th*, 1866.

J. G. Pratt, U. S. Ind. ag't.

SIR: We wish to know, through you, from the superintendent, when we are to seek a new home for our people. It would be better to seek for the country as soon as it gets cooler.

JOHN (his x mark) CONNER,
Head Chief.
CHARLES JOURNEYCAKE,
Ass't Chief.

To John G. Pratt, United States Ind. agent, Delaware reserve, Kansas.

OFFICE SUPT. IND. AFF'RS, ATCHISON, *Sept. 24th*, 1866.

SIR: I have the honor to herewith transmit a letter from Agent Pratt, of the 17th inst., enclosing one from the Delaware council

clerk, R. J. E. Johnnycake, in which it is suggested to use certain funds in his hands to help defray the expenses of the delegation of Delawares who are about to visit the South to select a new home. For this purpose I recommend a remittance of $700 +, and that the agent be authorized to use the $837.70 on hand.

Very respectfully, your ob't serv't,

THOS. MURPHY,
Supt. Ind. Affairs.

Hon. D. W. Cooley, Commissioner, Washington, D. C.

DELAWARE COUNCIL HOUSE,
WYANDOTT CO., KANSAS, *Sept. 16th*, 1866.

Maj. J. G. Pratt, U. S. Ind. ag't.

SIR: On your representation from the department for the Delawares to seek a new home, the council has concluded that the
455 money in your possession resulting from the sale of timber on national lands be used for the above purpose.

You will also recollect that by the order of Commissioner Dole the Delawares explored the southwest in the autumn of 1863; that Commissioner Dole promised to refund the money used on that expedition. It is the desire of the Delawares that the above be refunded; also that the annuity money be sent soon, so that the families of the delegates may use the same during the absence of the expedition.

Yours, &c., R. J. E. JONNEYCAKE.
Council Clerk.

DELAWARE AGENCY, KANSAS, *Sept.* 17, 1866.

SIR: Your letter of Sept. 11th, inclosing one from Commissioner Cooley of Sept. 1st, has been received. To-day I submitted to the Delaware council your instructions in regard to their seeking a new home. Inclosed please find letter from them expressing their pleasure in reference to the matter. I would add that I have on hand and subject to your order the sum of eight hundred thirty-seven dollars and seventy cents ($837.70), resulting from sale of R. R. ties and timber during 1865.

The expense of the party exploring in 1863 was seven hundred dollars ($700.00), and which Commissioner Dole promised them should be refunded on the ratification of their treaty. These two am'ts, equal to one thousand five hundred thirty-seven dollars and seventy cents ($1,537.70), they estimate will be needed for their present visit south, as it may be long protracted from the fact they have to negotiate with the tribe from whom they purchase.

They do not wish to leave home until the autumn payments, and I hope it may be possible to accommodate them.

Very respectfully, y'r o'b't s'v't,

JOHN G. PRATT,
U. S. Ind. Agent.

Thomas Murphy, Esqr., supt. Ind. aff's, Atchison, Kansas.

WASHINGTON CITY, D. C., *March 14th*, 1874.

Hon. E. P. Smith, Commissioner of Indian Affairs.

SIR: In order to get the business of my office in shape and be able to report the exact condition of their funds to the Cherokee national council I would respectfully ask you to furnish me the following information:

1st. The amount of stocks and bonds held by the department for the Cherokee nation on the 4th of July, 1866, including all non-paying stocks and abstracted bonds on which the Government was paying enterest, with character of these bonds.

2nd. The amount of proceeds from the sale of the neutral lands; also the net amount of the same when expenses were deducted and the present value of the bonds purchased therewith which is bearing interest.

456 3rd. The amount paid by the Delawares to the Cherokees for lands and interest on funds and the kind of stock in which it is held.

4th. The amount paid by the Shawnees and how invested, with face value.

5th. The amount of funds to pay the $150,000 of debt and from what sources derived.

6th. The amount transferred on the books of the Treasury and standing to the credit of the Cherokee nation, paid under act of Congress from Osage tribe of Indians for their lands, and whether the five per cent. interest it bears is payable without appropriation under the act; and if not, whether it has been estimated for.

7th. The proceeds from sales of Cherokee strip in Kansas so far and how held and invested, with face value of investments.

The purpose of this communication is to possess in my office an exact condition of our funds, so that estimates can be made thereon, and showing what portions of these funds are held on the books as national, school, and orphan.

I am, with respect, your ob't serv't,

D. W. BUSHYHEAD,
Treasurer C. N.

DEPT. INTERIOR, OFFICE INDIAN AFF'RS, *May 15th*, 1874.

D. W. Bushyhead, Esq., treasurer Cherokee nation, Washington, D. C.

SIR: I have received your letter of the 14th of March last, requesting to be furnished with certain statements, in order that you may be enabled to get the business of your office in shape and to report the exact condition of their funds to the Cherokee national council.

In compliance with your request I have caused to be prepared, in their simplest form, but with great care and much labor, the following statements, which are transmitted herewith, viz:

Statement No. 1, showing the receipts and disbursements on account of sales of the Cherokee neutral lands.

No. 2, receipts and disbursements on account of the sales of the Cherokee strip.

No. 3, showing the amount received from the Osages for lands and the disposition of the same.

No. 4, statement of the Cherokee national warrants paid and the sources from whence the funds used in payment were derived.

No. 5, statement of amount paid by the Delawares for lands, &c., per agreement of April 8, 1867, and how invested.

No. 6, statement of amount paid by the Shawnees, per agreement of June 7th, 1869, and how invested.

No. 7, Cherokee stock account, showing the amount and kinds of stock on hand July 19th, 1866; the purchases, sales, and redemption of stock since that date, and the amounts now on hand.

No. 8, showing the aggregate of the principal and the annual interest thereon, belonging to the several Cherokee funds, and the amount of interest payable in coin and in currency.

No. 9, statement showing in detail the amounts of interest and the premium on coin interest collected since July 1st, 1866,
457 giving amounts and kinds of stock and the period for which collected and the disposition of the same.

In reply to your inquiry, whether the interest accruing on the amount transferred from the Osages in payment for lands is payable without an appropriation by Congress, I have to say that, in the opinion of this office, the act of March 3rd, 1873, authorizing the transfer of said funds, confers the necessary authority for the payment of the interest without any special appropriation therefor by Congress.

Very respectfully, your ob't servant,

E. P. SMITH,
Commissioner.

No. 3.—Statement of Funds Derived from the Sale of Lands in the Cherokee Country to the Osages, under the 16th Article of the Treaty of July 19, 1866, and the Disposition Thereof.

1873.		
June 12.	To amount transferred from sales of Osage lands, in payment for 1,566,784 acres of land purchased by the Osages, per act of March 3, 1873	$1,096,748.80
1873.		
June 12.	By amount set apart for the benefit of an orphan institution, per act of February 14, 1873	20,000.00
"	set apart for the establishment of a literary institution, per act of February 14, 1873	75,000.00
"	set apart and invested in United States stocks, for the orphan fund, per act of February 14, 1873	80,000.00
1874.		
May —.	By balance, at interest, 5 per centum per annum	921,748.80
		1,096,748.80

$80,000 of the above funds were invested in United States stocks, the face value of which is $71,505.41, and the same were added to the orphan fund, per act of February 14, 1873. The $95,000 set apart by the act of February 14, 1873, for the benefit of an orphan institution and the establishment of a literary institution, was remitted to John B. Jones, Indian agent, on the 27th of April, 1874.

No. 5.—Statement of the Amount Paid by the Delawares to the Cherokees for Lands and an Interest in Funds per Agreement Between Said Indians, Dated April 8, 1867.

Cherokee funds to which stocks were transferred.	Kind of stocks transferred.	Amount.
National fund.....	Florida 7's.....	$6,000.00
	Louisiana 6's.....	4,000.00
	Missouri 6's.....	2,000.00
	North Carolina 6's.....	21,000.00
	South Carolina 6's.....	1,000.00
	United States issue to Union Pacific R. R. 6's....	156,638.56
School fund.....	" " " 6's....	51,854.28
Orphan fund	" " " 6's....	22,223.26
	Total stocks transferred.....	264,716.10
	The $230,716.10 United States stocks were transferred at a premium of 6⅜ per cent., the market rate at date of transfer-premium.	14,708.18
	Total stocks and premium.....	279,424.28
	Being the amount required to pay for lands and an interest in funds. These stocks are still on hand.	

Motion for a Rule upon the Honorable Secretary of the Interior.

Now come the petitioners, The Delaware Indians, residing in the Cherokee nation, *et al.*, by Walter S. Logan, their attorney,
458 and move the court for a rule upon the honorable Secretary of the Interior, requiring him to transmit to said court, to be used in the above case, copies of the following documents in said department, to wit:

A letter marked Delaware M 1277, being a letter written at Washington, D. C., February 13, 1868, by Thomas Murphy, Esq., superintendent of Indian affairs, to Hon. N. G. Taylor. This letter is on file in the office of the Commissioner of Indian Affairs, and attached to it are certain exhibits, all of which your petitioners pray may be transmitted to said court, together with the letter. The exhibits consist of—

1. Report of John G. Pratt.

2. A letter to the office of Indian affairs, dated Washington, D. C., September 1, 1866, signed D. N. Cooley, marked "Exhibit A," and apparently attached to the said report of John G. Pratt.

3. A letter dated "Delaware reserve, Kansas, October 13, 1866," signed John G. Pratt, addressed to various chiefs and counselors of the Delaware nation, marked "Exhibit B."

4. A certificate signed John G. Pratt, marked "Exhibit C."

5. A letter written by various chiefs of the Delaware nation to William P. Ross, principal chief of the Cherokee nation, dated Camp

on the Canae, Cherokee nation, December 9, 1866, marked "Exhibit D."

6. A certificate to R. E. J. Journeycake, dated "Delaware Diminish reserve, Kans., February 25, 1867," marked "Exhibit E."

7. A list of names of Delaware Indians, marked "Exhibit F."

A letter marked "Delaware M 1608," written at the office of superintendent of Indian affairs, at Atchison, Kans., on June 6, 1868, by Thomas Murphy.

Letter marked "Delaware M 82," written at Washington, D. C., February 1, 1869, by Thomas Murphy to Hon. N. G. Taylor, in which is included copy of a letter from John G. Pratt, written at the office of the Delaware agency on January 16, 1869.

A letter marked "Delaware C 111," written at the Cherokee nation February 15, 1869, by John Connor, addressed to Hon. N. G. Taylor.

Dated New York, May 8, 1899.

WALTER S. LOGAN,
Attorney for the Plaintiffs.

Reply of Interior Department.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *May* 26, 1899.

The honorable the Chief Justice of the Court of Claims.

SIR: In response to the order of the court in the case of The Delaware Indians *v.* The Cherokee Nation, No. 21139, requesting that said court be furnished, for use as evidence on the trial of the above-entitled cause, certain papers (or duly authenticated copies of the same) supposed to be on file in the Interior Department, as set forth in the motion of counsel for the plaintiffs accompanying said rule, you are advised that said order of the court and accompanying rule were referred to the Commissioner of Indian Affairs on the 17th instant for consideration and report.

The department is now in receipt of the report of the acting Commissioner of Indian Affairs, containing the certified copies as
459 requested in said rule, which, together with a copy of the report of the acting Commissioner, and said rule and motion, are inclosed herewith.

Respectfully,

THOS. RYAN,
Acting Secretary.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *May* 23, 1899.

The honorable the Secretary of the Interior.

SIR: I have the honor to acknowledge the receipt of your communication, dated May 17, 1899, transmitting a rule, dated the 13th

inst., issued by the Court of Claims in the case (No. 21139) of The Delaware Indians *v.* The Cherokee Nation, requesting that said court be furnished, for use as evidence on the trial of the above-entitled cause, certain papers (or duly authenticated copies of the same) supposed to be on file in the Department of the Interior, as set forth in the motion of counsel for plaintiffs accompanying said rule.

In reply I respectfully transmit herewith duly certified copies of the following described papers, being in full compliance with the rule of said court, viz:

(1.) Letter marked "Delaware M 1277, 1866, dated Washington, D. C., February 13, 1868, from Thomas Murphy, sup't of Indian affairs, to Hon. N. G. Taylor, Commissioner of Indian Affairs, and seven enclosures."

(2.) Letter marked "Delaware M 1608, 1868, dated Atchison, Kans., June 6, 1868, from Thomas Murphy, sup't of Indian affairs, to Hon. Chas. E. Mix, act'g Commissioner of Indian Affairs."

(3.) Letter marked "Delaware M 82, 1869, dated Washington, D. C., Feb. 1, 1869, from Thomas Murphy, sup't of Indian affairs, to Hon. N. G. Taylor, Commissioner of Indian Affairs."

(4.) Letter marked "Delaware C 111, 1869, dated Cherokee nation, Indian Territory, February 15, 1869, from John Connor to Hon. N. G. Taylor, Commissioner of Indian Affairs."

The communication from the Court of Claims and its enclosures are herewith returned.

Very respectfully, your obedient servant,

A. C. TONNER,
Acting Commissioner.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *May* 23, 1899.

I, A. C. Tonner, acting Commissioner of Indian Affairs, do hereby certify that the papers hereto attached are true and literal copies of the following described documents as the same appear on file in this office, viz:

(1.) Letter marked "Delaware M 1277, 1868, dated Washington, D. C., Feb. 13, 1868, from Thomas Murphy, sup't of Indian affairs, to Hon. N. G. Taylor, Commissioner of Indian Affairs, and seven inclosures."

460 (2.) Letter marked "Delaware M 1608, 1868, dated Atchison, Kans., June 6, 1868, from Thomas Murphy, sup't of Indian affairs, to Hon. Chas. E. Mix, acting Commissioner of Indian Affairs."

(3.) Letter marked "Delaware M 82, 1869, dated Washington, D. C., Feb. 1, 1869, from Thomas Murphy, sup't of Indian affairs, to Hon. N. G. Taylor, Commissioner of Indian Affairs."

(4.) Letter marked "Delaware C 111, 1869, dated Cherokee nation, Indian Territory, February 15, 1869, from John Connor to Hon. N. G. Taylor, Commissioner of Indian Affairs."

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, on the day and year first above written.

[SEAL.]

A. C. TONNER,
Acting Commissioner.

WASHINGTON, D. C., *Feb. 13th*, 1868.

SIR: I have the honor herewith to transmit a communication of the 6th inst. from Agent Pratt, reporting relative to the matters and statements set forth in the petition of Capt. Fall Leaf and other Delaware Indians, and which was transmitted to me in a letter from the Hon. Chas. E. Mix, acting Commissioner, on the 16th ult., with instructions to refer the said petition to Agent Pratt and direct him to investigate and report on the same.

I would respectfully call your particular and early attention to the agent's report and the enclosed exhibits, as they contain a complete history relative to the procuring of a new home for the Delawares in the Indian country and their removal thereto, and I have only to add that I am familiar with these transactions and that the statements contained in the agent's report are in the main correct.

I am the more particular to have early action on this question because there are several Delaware Indians yet remaining on their old reserve in Kansas awaiting the action of the department on this subject, and who will remove immediately and join their people at their new homes if the department so directs. The roads are now good, streams easily crossed, and by going to the Cherokee country now they will avoid the bad roads and high water in the spring, and will be there in time to put in a crop this year. They have purchased their horses, mules, and supplies to be used by them in their removal. By remaining in Kansas their stock is poor and their provisions are all being used up, so that if they remain until spring a fresh supply will have to be purchased.

Four-fifths of the tribe having already removed to their new homes, intending in good faith to put in a crop the coming season, I hope the department will see that the balance of their funds coming to them for their lands and improvements will be paid to them without delay, and thus encourage and enable them to make themselves comfortable.

Very respectfully, your ob't serv't,

THOS. MURPHY,
Sup't Indian Affairs.

Hon. N. G. Taylor, Commissioner, present.

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OFFICE OF U. S. AGENCY
FOR THE DELAWARE INDIANS,
KANSAS, *February 6th*, 1868.

SIR: Your favor of January 28th, stating that a letter had been received from the acting Commissioner of Indian Affairs, Hon.

Charles E. Mix, dated Jan'y 16, 1868, with a copy of petition of Capt. Fall Leaf and other Delaware Indians, and referring the petition to me, with instructions to make a full report thereon, came to hand on the 2d instant.

In order that the department may have a clear and final understanding of the subject, I will state that at the time of the treaty of July 4th, 1866, the Delaware Indians had not selected their new homes, but were to do so in the Indian country south of the State of Kansas. Accordingly, on the 1st of September, 1866, D. N. Cooley, then Commissioner of Indian Affairs, directed that a delegation of Delaware Indians were permitted to proceed south on this mission, and enclosing directions, maps, and copies of treaty of July 4th, 1866, as also copy of Cherokee treaty of July 19th, 1866 (see exhibit marked A1), of all of which I duly informed the Delaware people. They held a council at my office on the 13th day of October, 1866, upon this subject, and appointed as delegates for that purpose the following persons, to wit: Capt. John Connor, head chief; Capt. Sarcoxie and Charles Journeycake, assistant chiefs (the latter was unable to go); Joseph Armstrong (as his substitute) and Andrew Miller, councillors, and Isaac Johneycake, U. S. interpreter, to whom I furnished all the information, maps, treaties, &c., in my possession (see exhibit marked B) and also full authority (see exhibit marked C) for their doings in the premises.

This delegation, with a large number of other Delawares, about the 22d day of October, 1866 (no delegation went in 1865, as stated in the petition), proceeded south for the purpose of selecting a new home for their people. The main body having camped near Ft. Gibson, the delegates went to Tah-le-qua, the capital of the Cherokee nation—their legislature being then in session—and there had frequent conferences with their leading men on this subject, after which they, with their people and two commissioners appointed by the Cherokees, explored the Cherokee country west of the 96th meridian and decided that there was not sufficient good land west of that meridian in a body which could be cultivated and meet the wants of their people.

They thereupon, preserving their tribal organization, selected for their future homes that portion of the Little Verdigris country "commencing at the Kansas State line where the 96th meridian crosses the same; thence east ten miles; thence south thirty miles; thence west ten miles; thence north thirty miles to the place of beginning, subject to the conditions mentioned in the Cherokee treaty with the U. S. of July 19th, 1866, and addressed a letter to that effect to Wm. P. Ross, Esq., principal chief of the Cherokee nation, under date of December 9th, 1866 (a copy of which is herewith, marked Exhibit D).

This delegation returned on the 24th of December, 1866, having been absent for this purpose about seventy days and traveling over seven hundred miles. It will be seen, therefore, that no selection was made by them west of the 96th, as alleged in the petition, but

that the contrary is true, to wit, that the selection of their
462 future homes was east of that line and made with a full knowledge that to certain limits their people would be under the constitution and laws of the Cherokee nation. The people appeared to be satisfied with the exploration and selection of their new homes, and accordingly turned out en masse to register for removal or citizenship, which took place on the 18th day of February, 1867.

A number of regular councils had also been held, and the whole matter looked into in every aspect; the question of becoming Cherokees had been frequently talked over, and it being understood that a delegation of that nation would be in Washington city that spring to perfect any arrangements the Delawares should wish to make in locating their people in the Cherokee country east of the 96°, the council of the Delaware nation, in view of this highly important matter, as well as other national matters, on the 25th of February, 1867, appointed a delegation with full powers to transact all national business, consisting of John Connor, Charles Journeycake, Isaac Johnnycake, and John Sarcoxie, as will be seen by a copy of said appointment herewith, marked Exhibit E.

They are all leading men of the nation, the latter being the son of and councillor to Capt. Sarcoxie, chief of the Turtle band.

They did not enter into stipulations with the U. S., as stated, but with the commissioners of the Cherokee nation, which stipulations and agreement *was* approved by the department and the President of the U. S. (See 15th article of Cherokee treaty, ratified Aug't 11th, 1866.) The decision of the Delaware delegation to become Cherokees in full was without diversity of opinion. Neither were they "some of the chiefs and headmen of the tribe" as insinuated, who "acted contrary to the expressed will of a majority of the members of the Delaware tribe," but they were the delegates of their people, duly appointed in full council of the nation.

The averment that "the stipulations and agreements for the disposition of our lands in Kansas and purchase of other lands in the Cherokee country was without consultation with a majority of the members of the Delaware tribe and without their consent," meaning thereby the treaty of July 4th, 1866, is entirely new and wholly untrue; that treaty was executed by direction of the chiefs and council of the nation, no member being absent.

Referring again to the petition before me, I find the names of seven hundred and twelve persons purporting to be members of the Delaware nation, who are claimed in the petition to constitute a "large majority" of the people. The Delaware nation, as it now exists, numbers in all nine hundred and eighty-five (985) souls. (Citizen class not included, 68.)

On comparing this list of names to the petition with the record of Delaware Indians in this office I find that of the 712 there are but ninety-eight (98), including women and children, who are or were members of the Delaware nation, some of whose names appear two and three times; others, again, were dead previous to the getting up of the petition, and yet others had long since abandoned their tribal

organizations, all of which will more fully appear in exhibit marked F. The names of the residue of the petitioners are not those of any Delaware Indians known in this agency, but are evidently fictitious.

You can easily test the correctness of this statement by comparing the names on the petition with the alphabetical index of the registry on file in your office.

463 In conclusion I beg leave to state that at this time four-fifths of the Delaware Indians have left this reserve and are now in the Cherokee country, or en route for it, designing to make their new homes there in accordance with the agreement entered into with the Cherokees, of whom some have already purchased farms and have made arrangements to cultivate the same the present season, and all will be there in the course of a few weeks if permitted to take their own course.

Respectfully submitting the same, I am your ob't serv't,

JOHN G. PRATT,
U. S. Ind. Ag't.

To Thomas Murphy, Esq., sup't Ind. affairs, Washington city, D. C.

EXHIBIT A.

DEPARTMENT OF THE INTERIOR,
OFFICE IND. AFFAIRS,
WASHINGTON, D. C., *Sept.* 1*st*, 1866.

SIR: Under the provisions of the Delaware treaty of 4th July, 1866, copies of which are herewith, it is contemplated that those Indians may select for themselves, with the approval of the department, a new location in the Indian country, south of Kansas, amounting to 160 acres, if they wish for so much, for each person who will remove.

It appears to be necessary, before a decision can be made by the tribe as to how many will remove, that a delegation should visit the lands now open to their choice and report to their people. And it is very desirable that this should be done at the earliest possible day. You will therefore direct Agent Pratt to notify the tribe that a delegation is at liberty to proceed on this mission, and to furnish them with such credentials as they may need. He will also estimate for money necessary for their use, to be remitted from the funds of the nation. The following information should be communicated to Agent Pratt for the benefit of the exploring delegation, showing what lands are open to selection, and the map enclosed will serve to make clear the directions given.

Seminole lands: The *whole* of the late Seminole country is now open for the location of Kansas Indians, and is described as follows: "Beginning on the Canadian river a few miles east of the 97 parallel of west long., where Ockluappo, or Pond creek, empties into the same, thence due north to the North fork of the Canadian; thence up said North fork to the southern line of the Cherokee

country; thence with that line west to the 100th degree of west longitude; thence south along said parallel to the Canadian river, and thence down said river to the place of beginning.

These lands are purchased by the United States at 15 cts. per acre.

Creek lands: The Creeks have ceded to the United States the *west half* of the lands heretofore held by them, but of this west half the United States sets apart to the Seminoles a part described as follows: "Beginning on the Canadian river at the line of the Creek lands; thence north on that line to the North fork of the Canadian; thence up the North fork of the Canadian far enough to make 200,000 acres by running south to the Canadian; thence
464 down the Canadian to the place of beginning. *The balance of the west half of the Creek lands are open to location for Kansas Indians, being about 3,000,000 acres, and were purchased at 30 cents per acre.*

Cherokee lands: All of the Cherokee lands west of 96° west longitude are open to location for Kansas Indians at prices to be arranged with the Cherokees, with the approval of the dept. As to their lands east of 96° the treaty, copies of which are herewith, makes sundry provisions, to which the attention of the agent is to be directed and the Delawares informed thereof.

Choctaw lands: The Choctaws sell to the United States the country known as the leased lands, and selections for Kansas Indians may be made therein, not, however, to interfere with any prior arrangement for the refugee Indians therein.

The Choctaws and Chickasaws also invite the settlement among them of Kansas Indians, to be subject to the laws of those nations.

Quapaw lands: It may also be stated that, although no treaties have been made for the purpose, it is understood that the Quapaws are ready to cede to the U. S. for the use of Kansas Indians a considerable portion of their country.

With the information above given, it is hoped that the Delaware delegation will be able soon to report a satisfactory location for the action of the dept.

Very respectfully, your ob't serv't,

(Signed) D. N. COOLEY,
Commissioner.

Thos. Murphy, Esqr., sup't Ind. affairs, Atchison, K.

EXHIBIT B.

OFFICE OF THE U. S. AGENCY
FOR THE DELAWARE INDIANS,
DELAWARE RESERVE, KANSAS, *Oct. 13th*, 1866.

GENTLEMEN: I am directed by the Hon. D. N. Cooley, Commissioner of Indian Affairs, under date of Sept. 1st, 1866, to furnish you with such instructions and information as will enable you to proceed South and select for your tribe a new reserve in that country.

For your information all those lands in the Indian country which are open for settlement and selection, together with a map thereof, and also a copy of your treaty as well as that of the Cherokees, are herewith furnished you for your guide, and you may select lands in quantities of eighty or one hundred and sixty acres, as you may deem wise.

Let your action be prompt, your selections judicious, bearing constantly in mind the good of your people, and any treaties or agreements you may make you will see that they are properly prepared, signed, and attested, keeping one copy thereof for the benefit of yourself and nation, to be filed in this office, one copy to be forwarded to the Hon. Commissioner of Indian Affairs for his official action thereon, and one copy to be retained by the other contracting party or parties.

Having confidence that you will carry out the wishes of the
465 Government in your behalf, you will proceed upon your mission with my best wishes for your future welfare

I am, very respectfully, your ob't serv't,

(Signed) JOHN G. PRATT,
U. S. Ind. Ag't.

To Capt. John Connor, head chief. Capt. Sarcoxie, Chas. Journeycake, ass't chiefs not able to go. Joseph Armstrong, Andrew Miller, councillors. Isaac Journeycake, U. S. int'r delegation.

EXHIBIT C.

To all to whom these presents shall come, Greeting:

Know ye that by direction of the Hon. D. N. Cooley, Commissioner of Indian Affairs, under date of Sept. 1st, 1866, it has become my duty to furnish the delegates of the Delawares who may visit the Southwest for the purpose of selecting a new reservation therein all necessary and proper credentials.

Now, therefore, in accordance therewith I do hereby certify on honor that at a council of said Delawares, held at this office on this 13th day of October, A. D. 1866, it was determined by said council that the following persons were and are fully authorized to act for and on behalf of said tribe, to wit: Capt. John Conner, principal chief; Capt. Sarcoxie, Chas. Journeycake, assistant chiefs; by Joseph Armstrong (substitute), Andrew Miller, councillors; Isaac Johycake [Journeycake]?, U. S. interpreter; and that they have full, ample, and complete authority to select and secure new homes in the Indian country for said tribe, and that all their acts and doings in the premises are valid and binding upon said Delaware Indians.

Given under my hand at the office of the U. S. Delaware Indian agency for said Delaware tribe of Indians, in the State of Kansas, this 13th day of October, A. D. 1866.

JOHN G. PRATT,
U. S. Ind. Ag't.

EXHIBIT D.

CAMP ON THE CANAE,
CHEROKEE NATION, *December 9th*, 1866.

DEAR SIR: The undersigned delegates from the Delaware Indians, in company with the delegates on behalf of the Cherokee nation, have examined all the Cherokee country west of the 96° that they thought would be suitable for the Delawares to settle in, and have decided that there is not sufficient good land in a body west of that line that could be cultivated to meet the wants of the people, and have, therefore, preserving their tribal organization, selected that part of the country on the Little Verdigris or Canae, begin-
466 ning at the Kansas line where the 96° meridian crosses the same, and running thence east ten miles; thence south thirty miles; thence west ten miles; thence north to the place of beginning, subject to the conditions mentioned in the Cherokee treaty with the U. S. of July 19th, 1866.

Under the provisions of said treaty the price for the use of the same has to be agreed on by the two parties, subject to the approval of the President of the U. S.

Be so good as to present this matter to your national council for their final action, and communicate the same to the Rev'd John G. Pratt, U. S. Indian agent for the Delaware Indians, Leavenworth City, Kansas, for the action of the Delaware Indians.

Your ob't serv't,

(Sig'd) JOHN (his x mark) CONNOR,
Principal Chief.
CAPT. (his x mark) SARCOXIE, *Ass't Chief.*
ISAAC (his x mark) JOURNEYCAKE,
U. S. Interpreter.
ANDREW (his x mark) MILLER.
JOSEPH (his x mark) ARMSTRONG.

Attest:

(S'g'd) EDWARD S. MENAGE R.

To Wm. P. Ross, Esq., principal chief Cherokee nation, Tah-le-qua, C. N.

The above is a true copy.

ISAAC JOHNYCAKE,
U. S. Intpr.

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EXHIBIT E.

DELAWARE DIMINISHED RESERVE,
KANSAS, *Feb'y 25th*, 1867.

I, R. J. E. Journeycake, clerk of the council of the Delaware nation, do hereby certify that John Connor, Chas. Journeycake, Isaac Journeycake, and Jno. Sarcoxie, Delawares, were this day duly appointed and empowered by said council delegates on behalf of the said Delaware nation, to transact any and all business of a national character at Washington, D. C., with the United States or others.

(Signed) R. J. E. JOURNEYCAKE,
Clerk of the Council, Delaware Nation.

The above is a true copy.

ISAAC JOHNYCAKE,
U. S. Intpr.

467 EXHIBIT F.

Names of Delaware Indians that Appear upon a Petition Purporting to be Signed by Capt. Fall Leaf and Others.

No. on petition.	Names.	Remarks.	No. on registry roll in office of Indian affairs.
1	Capt. Fall Leaf		817
2	John Sarcoxie		96
3	George Swannock		267
4	John Swannock		358
5	Arthur Armstrong		10
6	James Simons		749
7	Jackson Simons		139
8	John Buffalo		364
9	Joseph Thompson		844
10	Sarcoxie, chief of Turtle band.		725
11	Ole me cum un		385
12	John Moses	This name is signed three time to petition—No. 12, No. 344, No. 691.	336
13	Elk Hair Moosehecund		633
15	She-She	Signed three times—Nos. 15, 484, 588.	434
17	Me mun dah heese		73
18	Ton goos qua	May be intended for	303
19	Jacob Hill		229
20	Tup per hick om	May be intended for	307
21	Wau sut tund		486
22	John Meconhecon	May be meant for	16
23	John Rogers	Signed again—No. 43	816

Exhibit F—Names of Delaware Indians, etc.—Continued.

No. on petition.	Names.	Remarks.	No. on registry roll in office of Indian affairs.
24	Walpa Ke hing	May be intended for. This name is signed twice.	825
25	Butcher	Signed again—593	833
26	Pa che ka toowha		712
27	Que che po coowha	May be meant for	619
28	E lah		156
29	E lah tut		615
32	Dick Brown	Signed again—439	278
33	James Swannock		33
34	James Wilson	Signed again—662—with spelling changed.	7
35	Simon Ketchum	Signed again—No. 453	681
36	John Williams		439
37	Forrest Mann		144
38	Len no see see	Signed again—No. 246	127
39	Pol le toon Moonshine		914
40	Na och poorholland	May be meant for	888
41	Old Horse		187
44	Tus cus quecarpi		689
46	Colonel Jackson		260
47	Soldier	Signed again—No. 558	679
48	To o wha	Probably intended for	889
49	Thomas Walker	Signed again—No. 346	884
51	Big Field	Signed again	352
52	William Swannock	Signed again—No. 334	49
53	General Jackson		252
55	Joe Wilson	May be intended for	520
56	Kos ke coo wha		232
57	Jacob Easy	Signed again—No. 242	461
59	Lat Chase		92
60	John Thomas	Signed again—344	546
63	Best Quality	Signed again—455	682
65	Four Miles		22
67	Wen Thom bea she ka	Supposed meant for	886
68	James Snake	Signed again—573	154
69	Young Wilson		236
72	Delaware Charlie		119
73	Moose ha que nund	May be meant for	707
75	Ki ki she no	May be intended for	610
78	Malitia Hill	Signed again—No. 530; spelling changed.	1
81	Shanghigh Swannock		843
82	Jacob Parks		713
85	Capt. Moonshine		297
91	Toe lo wha		437
96	Tel le car pi		778
97	Yellow Leaf	Signed again at No. 618	739
102	Wah mah a lah toon	May be meant for	877
105	Jack Ned	Abandoned the Delaware tribe several years ago, their lands reverting to the nation.	1163
107	Lucinda Ned		1152
108	Susan Ned		1157
114	Nancy Ned		1164
122	Wild Cat	Signed again—629	802
258	Julia A. Beaver		284

Exhibit F—Names of Delaware Indians, etc.—Continued.

No. on petition.	Names.	Remarks.	No. on registry roll in office of Indian affairs.
263	468 Wilson Sarcoxie		199
274	Jackson Reddick		226
286	Jacob Eneas		728
306	Martin Beaver		957
315	Lieut. Jewsharp	Dead	221
342	Young Martin		691
399	Big Bird	Dead	492
403	Ben Holland		587
408	Top of the Hill	Has been dead about ten years	
416	George Wilson		197
442	Star Brown		960
449	Benjamin Johnycake		738
454	Alexander Journeycake		160
458	Nancy Armstrong		445
470	Frenchman		376
508	William H. Shelah	His alias, "Little Jack," is also signed to petition supposed to be meant for.	338
539	Flat Foot		603
544	John Longbone	Dead 3 or 4 years	1019
563	White Turkey		74
566	Dutch Turkey		77
615	John Noe	Signed again with slight change in spelling—No. 121.	529
635	Tom Hill		984
655	John Shawnee		263
656	John White		264
657	Betsey Shawnee		262
684	James Harrison		905

The above is a complete list of all the names of persons belonging to the Delaware nation—men, women, and children—being 98 in number, found on the petition of Fall Leaf, Sarcoxie, and others, including 4 who have long since abandoned the nation, 4 who were dead before the petition was gotten up, and also 22 whose names appear signed to the petition 2 and 3 times each.

OFFICE SUPT. IND. AFFAIRS,
ATCHISON, KS., *June* 6, 1868.

SIR: I have the honor to inform you that on the 2d ult. Capt Fall Leaf, and those Delaware Indians who had remained on their old reservation in this State (because they were dis-atisfied with the arrangements made by their duly authorized delegates, which arrangements provided for them a new home in the Cherokee country east

of 96) called on Commissioner Taylor and myself at Lawrence, Kans. on our way to the Osage reservation. These Indians laid their grievances before us, and after thoroughly explaining to them their present condition, and future prospects, they agreed to abide by the conditions of the contract above mentioned, they being very destitute and unable to remove to the Cherokee country, without assistance; the Commissioner instructed their agent to pay over to them, the balance due them from the sales of their lands and improvements, and after the performance of this service, to proceed to the Cherokee country east of 96 where four fifths of the Delawares had already located and there pay to them the balance due them for their lands and improvements in Kans. and to pay also to the Delawares their annuity for the 1st & 2nd qrs. 1868. The agent performed the first part of these instructions, and on our return from the Osage reservation met
469 him on the 30th ult. on his way to the Cherok country to carry out the balance. While in council with the Osages several delegations of Delawares called on us, (those of this tribe who had gone east of 96) and had in good faith endeavored to carry out the conditions of the agreement between their representatives and the Cherokees, were well pleased with the country and their condition, many of them remarking that they had done more good hard work since their arrival in the country than they had done on their old homes in Kans. in that number of years and one of the principal reasons given was, that they could not get whisky and consequently per force were sober, industrious and happy. Capt. Sarcoxie one of the old chiefs of the Delawares, and some of his followers, called also on us, he has been dis-atisfied with the contract before alluded to, and with a few of his people located on Cane creek, Cherokee country west of 96, the principal cause of his dissatisfaction was, his objection to have his tribe merged into and become a part of the Cherokee nation (as all Indians have to do who locate east of 96) and thereby lose his national organization, name and power, on account of the near proximity of his people to the wild Indians one of his young men had been killed & scalped and several of his ponies stolen, per consequence he was very much disgusted and dissatisfied, the advantages to be derived from a strict compliance with the contract heretofore referred to and the troubles and disadvantages that were sure to follow a non-compliance, convinced the old man he had been misled and that matters had not been properly represented to him He left saying he would move his band east of 96, and comply with the contract. On our return home we met the last remnant of the Delawares on their way to their new homes; so to-day there is not a single Delaware in Kansas as an Indian. Some few have remained but they have become citizens according to the provisions of their treaty of July 4, 66 and thus this once wealthy & powerful tribe are no longer to be known by the old and proud name they bore; but have voluntarily chosen to become citizens of the Cherokee nations by which arrangement, the Government will be saved the expense of the management of one Indian agency, in this superintendency.

The agent of the Cherokees, will in future take care of and manage the affairs of the Delawares.

Very resp'y, your ob't servant,

THOS. MURPHY,
Supt. Ind. Affairs.

Hon. Chas. E. Mix, act'g Commissioner, Washington, D. C.

WASHINGTON, D. C., *Feb'y 1st*, 1869.

SIR: I have the honor to transmit herewith a letter of the 16th inst., from Agent Pratt calling attention to a certain contract or agreement made by the representatives of the Cherokee and Delaware Indians in April, 1867, by the terms of which the Delawares who removed to the Cherokee country were to be merged into and become a part of the Cherokee nation.

Very respectfully, your ob't serv't,

THOS. MURPHY,
Supt. Ind. Affairs.

Hon. N. G. Taylor, Commissioner.

470 OFFICE OF THE U. S. AGENCY FOR THE DELAWARE INDIANS, *January* 16, 1869.

SIR: It appears from information received from Capt. John Connor and Charles Journeycake, chiefs of the Delaware tribe of Indians now residents of the Cherokee nation, that C. N. Vann and Wm. Sunday or Lunday had been appointed in December last commissioners by the Cherokee national council to confer with the Delawares in reference to the arrangement entered into by the delegates of the respective parties at Washington in April, 1867, by which the Delawares were to be incorporated into the Cherokee nation and to urge upon the Delawares the necessity of completing the various provisions of that instrument at an early day.

In accordance with their request the chiefs of the Delawares desire that I should file in your office a list of all those Delawares who elected to remove to the Indian country under the provisions of the treaty of July 4, 1866, and also the "additional list" provided to be made by virtue of the arrangement of April 8, 1867, between the respective parties, and to furnish a copy of such lists to Col. Lewis Downing, now in your city.

I will therefore inform you that in April, 1867, a list of those Delawares who elected to remove to the Indian country under the provisions of the treaty of July 4, 1866, was filed in your office, which formed the basis of the arrangement then made with the Cherokees, which, together with such "additional list" as might be made by the Delaware council within "thirty days thereafter," should form the basis of calculation as to the Delawares. Such "additional list" was filed in your office as well as the removal list heretofore referred to in my report of Aug. 6, 1867, prefaced "Registry, allotment, valuation, etc., Delaware diminished reserve treaty, July 4, 1866." As

will appear upon reference thereto, these lists are marked A and B, respectively, and may be found upon pages 1 to 55 and 56 to 58, inclusive, and the total number removing under said treaty and arrangement was 985 persons, as appears upon said lists.

I deem it unnecessary to furnish a copy of the lists, as the chiefs request and respectfully submit the matter for your further consideration.

I am, sir, your ob't serv't,

JOHN G. PRATT,
United States Agent.

To Thomas Murphy, Esq're, supt. Indian aff'rs, Atchison, Kansas.

CHEROKEE NATION, INDIAN TERRITORY,
February 15th, 1869.

Hon. N. G. Taylor, Comm.

DEAR SIR: It come in hand that I must write a letter to you at present. That I shall draw your attention to those treaties that we have contracted as Delaware nation that was in the State of Kansas with the United States.

The Delawares on their part have always promptly complyed with their agreements on every part, say the treaty 1860 and again the last treaty July 4, 1866 which was concluded again, and according
471 to their last treaty we have abandon our old homes in Kansas which we have enjoyed nearly fourty years, and we are here in the Indian Territory Cherokee nation. We cannot make any more treaties with you as our great father. Now I look to you on the behalf of my people to carry out the fulfillments of our treaty with the United States. When we made a treaty in May 30, 1860, what did these my people as Delawares nation in Kansas get for us signing of that treaty we sold larg tract of land, and the rest divided into eighty acre lots to each individual members of the Delaware nation, and it was further agreed that we should as the Delaware nation get pay for all the stolen stock and the timber depredations and that never was carried out; then we as Delaware nation it come in hand another treaty must be made and we did make another treaty in July 4, 1866 with the United States according to the request of the United States Government, the people as was know as Delaware nation that was in Kansas have promptly complyed with their agreements on every part. Now I look to you as I state above to turn your attention to those treaties and have them carried out. We have nowhere else to look only to our great father Uncle Sam which is well able to see well to his loyal and obedient children. We as your subjects needed the moneys which is justly ours in every due time April and October semi-annually which I no need to specify the different points of the treaty stipulations for you have all these plain facts that is prescribed on those specified treaties which you may find in Indian Office in the city of Washington D. C.

Now to the present affairs of these people as Delaware nation I can safely say that they are in actual starvation some of them have already sold their teams and wagons to get provisions with to live on, teams that some depended on to prepare their grounds for cultivation this coming spring, some sell one thing and some another as long as they have anything. The result of all this sufferings of these people in the first place the severe drougth last season and the delay of our money which was due last fall, and the people went in dept here the merchants that has been tolerated to come in charge vast amounts for what they got to sell corn meal three dollars per bushel and other things in proportion. The people without any means were compel to take those things at three or four prices or else starve which those said merchants are aiming for this money thats due the said Delaware people.

I plainly state these things and request you to *to* see to them without any further delay I ask this and take the privilege to speak as the head chief of the Delaware nation as was known that was located in the State of Kansas and this without any excuse, if I am in the Indian Territory with the Cherokee nation I and my people feel the need of fair and just dealing from our great father Uncle Sam it matters not where we are.

I am your obedient servant,

HON. JOHN CONNOR,
Head Chief of the Delawares.

Motion for a Rule upon the Honorable Secretary of the Interior.

Now come the petitioners, The Delaware Indians, residing in the Cherokee nation, *et al.*, by Walter S. Logan, their attorney,
472 and move the court for a rule upon the honorable Secretary of the Interior, requiring him to transmit to said court, to be used in the above case, copies of the following documents in said department, to wit:

A letter signed "A. C. Tonner, acting Commissioner," written at the Department of the Interior, Office of Indian Affairs, Washington, May 3, 1899, and addressed to M. E. Harby, New York, which letter is in relation to the disposal of lands in the Indian Territory.

A map of the Indian Territory, compiled under the direction of Hon. John H. Oberly, Commissioner of Indian Affairs, by C. A. Maxwell, chief law and land division, Indian Bureau, John Olberg, draftsman, in the year 1889.

Dated New York, June 7, 1899.

WALTER S. LOGAN,
Attorney for Plaintiffs.

Reply of Interior Department.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *July* 5, 1899.

The honorable the Chief Justice of the Court of Claims.

SIR: In response to the order of the Court of Claims, in the case of The Delaware Indians *v.* The Cherokee Nation, No. 21139, requesting that court be furnished certain papers—or duly authenticated copies of same—for use as evidence on the trial of the above-entitled cause, supposed to be on file in the Interior Department, as set forth in the motion of plaintiff accompanying said rule, you are advised that said order of court and accompanying rule were referred to the Commissioner of Indian Affairs on the 24th ultimo for consideration and report.

The department is now in receipt of the report of the acting Commissioner of Indian Affairs, enclosing the certified copies as requested in said rule, which, together with a copy of the report of the acting Commissioner and said rule and motion, are enclosed herewith.

Respectfully, E. A. HITCHCOCK, *Secretary.*

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *June* 30, 1899.

The honorable the Secretary of the Interior.

SIR: Pursuant to direction contained in your letter of June 24, 1899, the office has had prepared and encloses herewith, duly certified, a copy of a letter dated May 3, 1899, and addressed by this office to Mr. M. E. Harby, New York, in relation to the disposition of lands in the Indian Territory; also a copy, duly certified, of a map of the Indian Territory compiled under the direction of Hon. John H. Oberly, Commissioner of Indian Affairs, by C. A. Maxwell, chief of the law and land division, Indian Bureau, in 1889, both of which papers are called for by a rule of the Court of Claims upon
473 the Secretary of the Interior, which was transmitted with your letter. Said rule is returned herewith, as you direct.

Very respectfully, your obedient servant,

A. C. TONNER,
Acting Commissioner.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *June* 30, 1899.

I, A. C. Tonner, acting Commissioner of Indian Affairs, do hereby certify that the paper hereto attached is a true copy of the original as the same appears of record in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed on the day and year first above written.

[SEAL.]

A. C. TONNER,
Acting Commissioner.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *May* 3, 1899.

M. E. Harby, Esq., attorney at law, 27 William St., New York, N. Y.

SIR: This office has received in due course of business and has fully considered your communications of January 9, January 11, and February 16, 1899, wherein you request to be advised as to (1) what lands have been sold by the United States to the Indians, (2) what lands have been sold by Indians to the United States, and (3) what lands have been sold by Indians to Indians, in the Indian Territory, Oklahoma, and Kansas, at less than $1 per acre.

You desire to know the acreage of the lands conveyed, how the lands are situated, the dates of transfer, dates of transfer of consideration, record of transfer, &c., and request to be supplied at your expense with a map showing the lands conveyed, prepared in the particular manner indicated in your letters.

Said information and map is required, as you state, for use in the suit of The Delawares *vs.* The Cherokee Nation, now pending in the Court of Claims.

In considering these matters it is proper to begin with the Indian Territory, the creation of which, excepting that part embraced within the Quapaw agency, was effected by a number of treaties entered into at different times between the United States and (1) the Cherokee Indians, (2) the Muscogee or Creek Indians, and (3) the Choctaw Indians.

The manner in which said tribes became possessed of lands in the Indian Territory and the various dispositions made of such lands is so fully treated of in Senate Ex. Doc. No. 78, 51st Congress, 1st session, as to preclude the necessity of repetition here. A copy of said document, as you will undoubtedly remember, was informally supplied you by this office.

474 I. The Cherokees.

Disposals of lands by the Cherokees were effected under the provisions of article 16 of the treaty of July 19, 1866, (14 Stats., 804), which article is as follows:

"The United States may settle friendly Indians in any part of the Cherokee country west of the 96th degree, to be taken in a compact form in quantity not exceeding one hundred and sixty acres for each member of each of such tribes thus to be settled; the boundaries of each of said districts to be distinctly marked and the land conveyed in fee simple to each of said tribes, to be held in common or by their

members in severalty, as the United States may decide. Said lands thus disposed of to be paid for to the Cherokee nation at such price as may be agreed on between the said parties in interest, subject to the approval of the President; and if they should not agree, then the price to be fixed by the President. The Cherokee nation to retain the right of possession of and jurisdiction over all of said country west of 96th degree of longitude until thus sold and occupied, after which their jurisdiction and right of possession to terminate forever as to each of said districts thus sold and occupied."

In pursuance of the provisions of said article 16, and of the act of June 5, 1872 (17 Stats., 228), a tract of country bounded on the east by the 96th degree west longitude, and on the south and west by the Creek country and the main channel of the Arkansas river, was set apart for the Osage and Kansas Indians, containing 1,566,784 acres, and was paid for to the Cherokees by the Osages at 70 cts. per acre, amounting to $1,096,748.80 per act of March 3, 1873. Said tract was conveyed by the Cherokees to the United States in trust for the benefit of the Osage and Kansas Indians, by deed dated June 14, 1883, in accordance with an item in the act of March 3, 1883 (22 Stats., 624). Said deed is recorded in volume 6, Indian deeds, one of the records of this office.

Disposition of Cherokee Lands West of Arkansas River.

The total area of Cherokee lands lying west of the Arkansas river originally amounted to 6,574,486.55 acres. On June 23, 1879, in pursuance of the act of 1872 (17 Stats., 190) and of the act of 1876 (19 Stats., 120) the President appraised the value of said lands, as follows:

6,344,572.51 acres, at 47.49 cts. per acre.....	$3,013,037.485
230,014.04 acres, at 70 cts. per acre (Pawnee).....	161,009.828
	3,174,047.313

The data furnished by the commission appointed to appraise said lands, upon which the President fixed the value thereof, and other matters connected therewith, will be found printed in H. R. Ex. Doc. No. 54, 47th Congress, 2nd session.

Under article 16 of the treaty of 1866, before referred to, the Cherokees conveyed to the United States certain tracts of land in the Cherokee country lying west of the 96th degree west longitude by separate deeds, each dated June 14, 1883, recorded in volume 6, Indian deeds (one of the records of this office), in trust for the use and benefit of the tribes named, viz:

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Tribe.		
Pawnees	230,014.04	Act Ap'l 10, 1876 (19 Stat., 28); act M'ch 3, 1883, (22 Stat., 624).
Otoes and Missourias	129,113.20	Act M'ch 3, 1881, sec. 5, 21 Stat., 381; order Sect'y Int., June 5, 1881; act M'ch 3, 1883 (22 Stat., 624).
Poncas	101,894.31	Act Aug. 15, 1876 (19 Stat., 192); act M'ch 3, 1877 (19 Stat., 287); act May 27, 1878 (20 Stat., 76); act M'ch 3, 1883 (22 Stat. 624).
Nez Percés	90,710.89	Act May 27, 1878 (20 Stat., 74); act M'ch 3, 1883 (24 Stat., 624).

The consideration for this land consisted in an appropriation of $300,000 under act of March 3, 1883, which sum was deducted from the price paid for the Cherokee Outlet under the agreement of Dec. 19, 1891, as were also accounted for the appropriation of $300,000 per act of June 16, 1880; the sum of $48,389.46 paid for the lands assigned the Poncas appropriated by act of March 3, 1881, and $75,000 appropriated by the act of October 19, 1888, to pay certain freedmen and Delaware and Shawnee Indians their proportion of the amount appropriated by said act of March 3, 1883.

II. Muscogees or Creeks.

By the 3rd article of the treaty of June 14, 1866 (14 Stats., 786), the Creeks ceded "to the United States, to be sold to and used as homes for such other civilized Indians as the United States may choose to settle thereon, the west half of their entire domain, to be divided by a line running north and south," containing 3,402,430.48 acres, for which lands the United States paid for at the rate of 30 cts. per acre. See act of July 7, 1884 (23 Stats., 212).

The dispositions made of the lands ceded by the Creeks by the treaty of 1866 will be found set forth in detail on pages 17 to 21, inclusive, of Senate Ex. Doc. No. 78, 51st Congress, 1st session.

III. Seminoles.

The Creek nation, by article 1 of the treaty of August 7, 1856 (11 Stats., 699), ceded and conveyed to the Seminole Indians a portion of the Creek domain, included in certain stated boundaries, for and in consideration of the moneys, &c., stipulated to be paid in said treaty.

The Seminoles, by 3rd article of the treaty of March 21, 1866 (14 Stat., 756), ceded to the United States their entire domain, being the same lands ceded to them by the Creek treaty of 1856, and by the same article the United States ceded to the Seminoles a tract of country containing 200,000 acres out of the cession made by the Creek treaty of June 14, 1866 (14 Stat., 786), before referred to.

These transfers were made for the consideration named in said treaties.

For statement of dispositions of lands ceded by the Seminole treaty of March 21, 1866, see pages 22 and 23, Senate Ex. Doc. No. 78, 51st Congress, 1st session.

476 III. Choctaws and Chickasaws.

By article 9 of the treaty of June 22, 1855 (11 Stat., 611), the Choctaws relinquished to the United States all their interest in and to all lands west of the 100 degree west longitude, and the Choctaws and Chickasaws *leased* to the United States all that portion of their common territory west of the 98 degree west longitude, containing about 7,700,000 acres, for the permanent settlement of the Wichitas and such other tribes or bands of Indians as the Government desired to locate thereon.

In consideration of said relinquishment and lease the United States agreed, per article 10 of said treaty, to pay to the Choctaws $600,000 and to the Chickasaws $200,000.

By article 3 of the treaty of April 28, 1866 (14 Stat., 769), the Choctaws and Chickasaws, in consideration of the sum of $300,000, ceded to the United States the lands leased by article 9 of the treaty of 1855. As to the legal effect of this cession, see "The Choctaw and Chickasaw Nations *vs.* The Wichita and Affiliated Bands and The United States," in the Court of Claims, not yet reported.

The foregoing constitutes all of the disposals of Indian lands within the Indian Territory at less than $1 per acre.

It is not deemed necessary to include in this communication the data called for with respect to disposals of Indian lands in Kansas. In a communication dated June 28, 1877, addressed to Hon. S. J. Crawford, this office furnished a statement showing all Indian lands in Kansas at the time of its organization as a Territory (May 30, 1854); the disposition of said lands; the area of each Indian reservation on January 29, 1861, the date of the admission of Kansas into the Union as a State; the number of acres in each reservation sold, and the price paid, &c. It is understood that you already have a copy of this communication in your possession.

With regard to the map asked for by you, the office would state that it is not deemed practicable to furnish same.

Very respectfully, A. C. TONNER,
Acting Commissioner.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *June* 30, 1899.

I, A. C. Tonner, acting Commissioner of Indian Affairs, do hereby certify that the paper hereto attached is a true and literal copy of a map of the Indian Territory compiled under the direction of Hon. John H. Oberly, Commissioner of Indian Affairs, by C. A. Maxwell,

chief law and land division, Indian bureau, John Alburg, draftsman, in the year 1889, as the same appears on file in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed on the day and year first above written.

[SEAL.]

A. C. TONNER,
Acting Commissioner.

[Map omitted from printed record.]

477 *Motion for a Rule upon the Honorable Secretary of the Interior.*

Now come the petitioners, The Delaware Indians, residing in the Cherokee nation, *et al.*, by Walter S. Logan, their attorney, and move the court for a rule upon the honorable Secretary of the Interior, requiring him to transmit to said court, to be used in the above case, copies of the following documents in said department, to wit:

A letter marked "Gen. Supt. J. 539," dated Department of the Interior, August 18, 1863, signed J. R. Usher, Secretary, addressed to W. P. Dole, Esq., Leavenworth, Kansas.

A letter written by Hon. William P. Dole, Commissioner, to F. Johnson, Esq., at Quindaro, Kansas, dated Department of the Interior, Office of Indian Affairs, March 29, 1864. A copy of this letter is contained in Letter Book 73 of January 9, 1864, to April 23, 1864, and is found therein at page 390. This book is on file in the Office of Indian Affairs. In this latter there is contained an acknowledgment of a communication from F. Johnson of the 21st inst., "stating the wishes of the Delaware chiefs in regard to the purchase of land from the Cherokees." Your petitioners request that this communication from F. Johnson be transmitted to the above court in connection with the said letter signed W. P. Dole.

A letter marked "Delaware M 737," written at the office of superintendent of Indian affairs at Atchison, Kansas, on August 14, 1867, signed Thomas Murphy, and addressed to Hon. Charles E. Mix, at Washington, D. C.

Together with this letter was transmitted a "book containing a complete and corrected registry of the Delaware Indians; * * * also an index to the said book, with Agent Pratt's explanatory report." Your petitioners request that this book and index be transmitted to the above court, together with the said letter of Thomas Murphy.

A letter dated Department of the Interior, Office of Indian Affairs, October 14, 1867, signed C. E. Mix, acting Commissioner, addressed to Hon. O. H. Browning, Secretary of the Interior. This letter is on file in the Office of Indian Affairs, but has no file mark. It is colloquially referred to as "office letter."

WALTER S. LOGAN,
Attorney for Plaintiffs.

Reply of Interior Department.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *October* 9, 1899.

The honorable the Chief Justice of the Court of Claims.

SIR: In response to the order of the Court of Claims in the case of The Delaware Indians *vs.* The Cherokee Nation, No. 21139, requesting that the court be furnished certain papers, or duly authenticated copies thereof, for use as evidence on the trial of said case, supposed to be on file in this department, as set forth in the motion of the plaintiff accompanying said rule, you are advised that said order of the court and accompanying rule were referred to the Commissioner of Indian Affairs on July 14, 1899, for consideration and report.

478 The department is now in receipt of the report of the acting Commissioner, enclosing the certified copies of all the papers desired, except a certain "book containing a complete and correct registry of the Delaware Indians; * * * also an index to the said book, with Agent Pratt's explanatory report," which book the acting Commissioner states is not transmitted, as the representative of the Delaware Indians in this city has informally advised his office that it may not be needed in the pending suit.

The certified copies and a copy of the report of the acting Commissioner are enclosed herewith.

Respectfully,

THOS. RYAN,
Acting Secretary.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *October* 6, 1899.

The honorable the Secretary of the Interior.

SIR: Referring to department letter dated July 14, 1899, enclosing a rule issued July 11, 1899, by the Court of Claims in case No. 21139, The Delaware Indians *v.* The Cherokee Nation, requesting that said court be furnished with certain documents supposed to be on file in the department for use as evidence on the trial of said case, I have the honor to transmit herewith duly certified copies of the following correspondence, on file in this office, in partial compliance with the request contained in said rule:

(1.) Letter marked "Cen. Supt. I 539," dated Dep't of the Interior, Aug. 18, 1863, signed by J. R. Usher, Secretary, addressed to Wm. P. Dole, Leavenworth, Kansas.

(2.) Letter written by Wm. P. Dole, Com'r of Indian Affairs, to F. Johnson, U. S. Indian ag't, Delaware agency, Quindaro, Kans., dated Wash'n, D. C., March 29, 1864, as the same appears of record in Letter Book 73, page 390.

(3.) Letter marked "Del. J. 485," dated March 21, 1864, from F. Johnson, U. S. Ind. ag't, Delaware agency, Kansas, to Wm. P. Dole, Com'r of Indian Affairs, Wash'n, D. C.

(4.) Letter marked "Del. M. 737," dated Aug. 14, 1867, from Thomas Murphy, supt. Ind. affairs, Atchison, Kansas, to Chas. E. Mix, act'g Com'r of Ind. Affairs, Wash'n, D. C.

(5.) Letter written by Chas. E. Mix, act'g Com'r of Ind. Affairs, dated Oct. 14, 1867, to the Secretary of the Interior, as the same appears of record in Report Book 16, page 478.

In said rule request is made for a certain "book containing a complete and corrected registry of the Delaware Indians; * * * also an index to the said book, with Agent Pratt's explanatory report." This book is not transmitted with this report, as the representative of the Delaware Indians in this city has informally advised this office that it may not be needed in the pending suit.

Very respectfully, your obedient servant,

A. C. TONNER,
Acting Commissioner.

479 DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *October* 6, 1899.

I, A. C. Tonner, acting Commissioner of Indian Affairs, do hereby certify that the papers hereto attached are true copies of the originals as the same appear on file and of record in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed on the day and year first above written.

[SEAL.] A. C. TONNER,
Acting Commissioner.

DEPARTMENT OF THE INTERIOR, *August* 18*th*, 1863.

SIR: I enclosed on Saturday, the 15th, a draft of the proposed treaty with the Delawares. I have intended to propose a liberal treaty to them, paying them all their claims, of every character, in the expectation that they would the more readily accept it. It guards their rights in every respect that occurred to me. The treaty will be of no effect until their new homes are selected and purchased, and then the Delawares will have twice the quantity of land they now have, and $1.25 per acre beside.

The advantages of the proposed treaty to them will occur to you as you read it; and you will please express to the Delawares that it has been prepared by me with a desire to guard their interest and do everything that I consider the best for them.

If you meet the southern Indians and conclude a treaty with them for territory for the Delawares, you will see that it contains the condition that they and other Indians in Kansas will consent to make their homes upon it. Capt. John Conner has spoken of the country upon the Verdigris river as being very desirable. If the

Delawares will name a place, you will do well to treat for it, if you can.

The draft sent will be your guide for treating with the Pottawatomies and other Indians of Kansas for their removal.

You will perceive what prices can be paid for the land to be treated for. It cannot exceed 37½ cents per acre and should not exceed 10 cents, unless we can have the choice of selection, taking only such tracts as are suitable for homes, being well watered and timbered and of good soil.

Very respectfully, your ob't serv't,

J. P. USHER, *Secretary.*

Wm. P. Dole, Esq., Leavenworth city, Kansas.

DEPARTMENT OF THE INTERIOR,
OFFICE INDIAN AFFAIRS, *March 29th*, 1864.

F. Johnson, Esq., U. S. Indian Affairs, Quindaro, Ks.

SIR: Your communication of the 21st instant, stating the wishes of the Delaware chiefs in regard to the purchase of land from the Cherokees, is received.

480 In reply I have to say that John Ross, head chief of the Cherokees, and a portion of the delegations are still here and it is now uncertain just how soon the business that brought them here will be so far completed as to admit of their return home, but when they do so they will visit the Delawares to confer with them.

I am assured by Mr. Ross of the willingness on the part of the Cherokee- to make a treaty with the Delaware- and let them have a portion of the Cherokee lands. If it shall be desirable and necessary for a delegation of the Delawares to visit the Indian country with a view of making a suitable location for themselves, they are authorized to do so and you are authorized to go with them, and you with the delegation will accompany John Ross on his return to that country, when he shall have first had a conference with them in Kansas.

For the purpose of this exploration the Delawares are authorized to make an appropriation of an amount sufficient to defray the expenses.

Very respectfully, your ob't serv't,

W. P. DOLE,
Commissioner.

DELAWARE AGENCY, KANSAS, *March 21st*, 1864.

SIR: I am requested by the chief of the Delaware tribe of Indians to inform you that they received your letter stating that John Ross, head chief of the Cherokees, will shortly visit the Delawares in Kansas on his way home to the Indian country, and that the Delawares will be enabled to purchase land of the Cherokees.

If Mr. Ross has not the power to consummate a treaty, *and it is necessary for the Delawares to visit the Indian Territory for that pur-*

pose, they wish to know if they can have the privilege of doing so; also, whether they can have the privilege of making an appropriation to pay the expenses of the trip, and also whether you will permit me to go with them.

Very respectfully, your ob't serv't,

F. JOHNSON, *Ind. Agent.*

Hon. Wm. P. Dole, Com'r of Ind. Affairs, Washington city.

OFFICE SUPT. IND. AFFAIRS,
ATCHISON, KANS., *Aug't 14th*, 1867.

SIR: I have the honor herewith to transmit a book containing a complete and corrected registry of the Delaware Indians—together with the number and description of their respective allotments—and the aggregate valuation of said allotments and improvements thereon. Also an index to the said book, with Agent Pratt's explanatory report of the same.

As it is the particular desire of these Indians to remove to their new homes in the Cherokee country the coming fall, I respectfully request that the dep't will, without delay, take the necessary steps to procure for them from the Missouri River Railroad Com-
481 pany the money due them for their lands and improvements, and thus enable this people to carry out their expressed wishes to remove this coming fall.

Very respectfully, your ob't serv't,

THOS. MURPHY,
Supt. Ind. Affairs.

Hon. Chas. E. Mix, acting Commissioner, Washington, D. C.

P. S.—I also enclose the notice given by the Delawares in council to their agent, that they are now ready to remove to the Indian country and vacate their lands in Kansas as soon as they get their money for the same, which notice is marked A.

T. MURPHY, *Supt., &c.*

OFFICE OF THE U. S. AGENCY
FOR THE DELAWARE INDIANS,
DELAWARE RESERVE, KANSAS, *August 6*, 1867.

SIR: By the provisions of the 6th article of the treaty of July 4, 1866, between the Delawares and the United States, it is provided that "whenever the Department of the Interior shall be notified by council, through the agent, that any of the Delawares who hold land in severalty are ready to remove, at the same time describing their allotments, there shall be paid to each such persons the value of his allotment and that of his family, to enable him to remove to and improve his new home."

I was present at the council of the Delawares, held May 2d, 1867, when the subject of removal was fully discussed, and it was decided

unanimously that as a nation they were ready to remove to the Indian country, and instructed their clerk to so notify the Government, through the undersigned. His notice to this effect, marked A, is herewith transmitted. In compliance therewith I hereby forward book, marked "Registry, allotment, valuation, etc., Delaware Diminished Reserve, Kansas, treaty, July 4th, 1866," with index, containing all the reports required of this office, in a connected form, which I have deemed necessary to carry out the various provisions of the treaty, and thereby enable the department, at the earliest practicable time, to disburse to the Indians their respective amounts.

Lists A and B, pages 1 to 57, inclusive, exhibits the names of all Delawares who have elected to remove from their present homes and vacate their lands in Kansas, together with a description of the same, the value thereof and the valuation of the improvements thereon, and includes those who have no land. These lists also exhibit the names, allotments, description, and valuation of the land and improvements thereon of children of Delaware blood born since the allotment of 1860, as required by the 3d article of the treaty of July 4th, 1866, for which see special report marked "I," pages 103 and 110, inclusive.

List A indicates the names of those on registry, filed at Washington, D. C., April, 1867, with such corrections in numbers and names as identify the parties or describe the present allotments.

List B shows such persons as were either omitted from not being present at the registry or were born since the same was taken, or have since been adopted by the Delaware council as reported to me, or who have elected to become citizens and were so registered, but have since voluntarily elected within the thirty days agreed upon between the Delawares and Cherokees to remove with the tribe under said treaty, opposite each of whose names appropriate explanatory remarks have been made. The last list was provided to be made by the Delawares and Cherokees in April, 1867, on file in your office. The valuation of the improvements on each allotment of the various reports is copied correctly from the reports of the commissioners appointed by the Government to make said appraisement, and is included to give completeness to the statements.

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I am also, by the latter part of the 3d article of the treaty of July 4, 1866, required to allot to children of heads of families who have elected to dissolve their tribal relations and become citizens of the United States, and who are entitled to allotments, such allotments as they may select from those who elected to remove, which selections (see Special Report, marked "L," pages 117 to 118, inclusive) are by the terms of the treaty reserved from the sale, thereby leaving those Indians whose lands have been so selected without any land whatever. As this would not be in accordance with the spirit and intent of the treaty I have accordingly reallotted, out of the public land, to each one whose allotment has been so selected an equivalent for the same, preserving their original allotment numbers, all of which will be found properly noted in the

various statements, the special report of which is marked "K," pages 113 and 114, inclusive. In this manner the purchaser will not be at all affected, and at the same time the Indian receive his money, with the balance of the tribe, to enable him to remove and to improve his new home. To all of which the attention and approval of the department is called.

In the removal list are several Delawares whose original allotments were so far short of eighty acres to which they were entitled as to do manifest injustice to them now that they are about to remove. In a manner to equalize the same and give more general satisfaction I have taken the liberty to add to the allotment of each such, out of the public lands, an amount approximating to what they were originally entitled to receive. This number is small and the additions are properly noted in the column of remarks. (See Special Report marked "M," page 119.)

In list C, at pages 60 to 69, inclusive, will be found a correct statement of Delaware Indians deceased, who belonged to families of this removing class.

In list G, at page 93, a similar statement of those who belonged to the citizen class, and opposite their names on said lists the number and description of their respective allotments, the value thereof, and the valuation of the improvements thereon.

The treaty of May 30, 1860, article 2, provides that the Secretary of the Interior shall make such rules and regulations as he may deem necessary or expedient respecting the disposition of any of said tracts (allotments) in case of the death of the person or persons to whom they may be assigned, so that the same shall be secured to the families of such deceased person. No such regulations are on file in my office, but have been called for under date of April 3d, 1867.

List D, pages 72 to 75, inclusive, contains a statement of the property abandoned by the parties to whom the same was allotted, with the number of the allotment, a description thereof, the value and valuation of the improvements thereon. Said property was allotted to Delaware Indians under the treaty of May 30, 1860, who
483 either have always been absent from the Delaware reserve or having temporarily occupied the same, removed away from the nation and are not now recognized as a part of the Delaware people by the council and do not receive annuities except, however, registry numbers 1197 and 1198, the first of which appears to be an error in relocation and the second improperly allotted. I have therefore placed them in this list. The disposition of these lands is provided for in the treaty of July 4, 1866.

List E, pages 77 to 79, inclusive, exhibits the number of acres, together with a description and value thereof and valuation of the improvements thereon of public lands not allotted.

List F, pages 85 and 86, contains a statement of the persons who originally elected to become citizens and were so registered, with the addition of the name of Ida M. Collins, an infant born since the registry of Feb'ry 18, 1867, was taken, together with the ages,

number of their respective allotments and description of the same, and the *original* number of the allotment selected from lands of removing Delawares, with the valuation of the improvements thereon, with marginal references to whom to be paid; also references to those who have since voluntarily elected to remove with the tribe and were placed on the list accordingly.

List N is a condensed table denoting the number of acres, the value thereof, and the valuation of the improvements on the Delaware diminished reserve in the State of Kansas. See page 121.

In addition to the above, the Delawares claim the islands in the Missouri river, opposite to the original Delaware reserve, and also the larger part of the military reservation of Fort Leavenworth; and, as they are upon the eve of a departure from the State of Kansas, they are desirous to have their claims therefor acquired under the treaty of 1829 adjudicated.

Upon a careful examination of the plots of this reserve I have reason to believe that you may possibly find a trifling error in acres in the allotment of 1860. I will therefore cite you to allotments 776 and 547, sections 18 and 19, town. 12, range 21, and also allotment 863 and SW. fr. ¼ of NW. fr. ¼ section 6, town. 12, range 23.

The chiefs and councillors are very anxious to remove to their new homes this fall so that during the winter they can be building houses and preparing fields to till the next year. To enable them to do so the money due the people should be paid to them as early as October next.

I am, sir, your most ob't serv't,

JOHN G. PRATT,
United States Ind. Agent.

To Thomas Murphy, Esqr., supt. Ind. aff'rs, Atchison, Kansas.

DEPARTMENT INTERIOR,
OFFICE INDIAN AFFAIRS, *October* 14, 1867.

Hon. O. H. Browning, Secretary Interior.

SIR: Referring to my communication of the 3d ultimo, stating the approximate amount of money required from the Missouri River Railroad Company in payment for the lands to be sold to said company under the Delaware treaty of July 4th, 1866, I now have the honor to report as follows, viz:

The whole area of the Delaware diminished reservation
484 amounts to one hundred thousand and ninety-two acres and forty-one hundredths of an acre (100,092.41).

The lands to be reserved from sale are as follows, viz;

For those who, under the treaty, have elected to become citizens of the United States.....acres...		5,655.45
For children of the above class.....do.....		398.23
For lands selected to satisfy the Connor, Teblon, and Necon Hecon floats, under the treaty of May 30, 1860 (Stat. at L., vol. 12, p. 1131), and the mission farm already patented		1,440.40
Making in all.....acres...		7,494.08
Which, deducted from the whole area of the reserves, leaves to be patented to said company or assigns 92,598.33 acres, which, at $2.50 per acre, the contract price, amounts to.....		$231,495.82½
The appraised value of the improvements on the allotted lands, according to the report of the commissioners, is		38,181.40
Amount of improvements on unallotted lands.....		4,810.00
		274,487.22½
The commissioners report that the log house built by the Government upon allotment No. 356, and formerly used as an agency building, is worth $200, and the company having verbally assented to pay that sum it is therefore added to the gross amount.....		200.00
		274,687.22½
The commissioners have included in their appraisement, as appears from report of Agent Pratt, the improvements upon lands selected by Edward E. Grinter, of the citizen class, from the allotment of Lucinda Marshall, No. 310, amounting to the sum of..	$92.50	
and also upon lands selected by Rosalie Swisher, of the citizen class, allotted to Katy Falleaf, No. 1003, amounting to.....	197.00	
		289.50

As the company do not get the lands upon which the improvements are made, the amount thereof should be deducted.

The commissioners recommend that the appraised value of the mill and the council house, which were upon the unallotted lands, but which were burned after the appraisal, should be deducted. Should you concur in that recommendation, the deductions to be made will be as follows, viz:

From the award to Lucinda Marshall.....	$92.50	
From the award to Katy Falleaf.....	197.00	
For value of council house.....	500.00	
For value of council mill.....	2,885.00	
		$3,674.50
which amount, if allowed, will reduce the gross amount for the lands and improvements to		270,912.72½
From the report of Agent Pratt it appears that of the foregoing 92,598.33 acres there were of abandoned allotments 4,112.07 acres, valued at.....	10,280.18	
Improvements	203.50	
Making a total of.....		10,483.68
Unallotted lands, 2,648.17, valued at.....	6,620.43	
Improvements	1,425.00	
		8,045.43
		18,529.11

485 which amount, under article 6 of the treaty, should go into the general fund of the tribe, and which, deducted from the gross amount, $274,687.22½ (provided the foregoing deductions are made), will leave the sum of $256,058.11½ to be paid in relative proportion to the Indians who have elected to remove.

The enclosed list embraces descriptions of all of the residue of the lands within the diminished reservation after making the deductions before mentioned.

The Delaware council having given notice, through the agent, that the tribe is ready to vacate the lands and remove south so soon as the money for the same shall have been paid to them, I see no reason, as at present advised, for delay in closing the business and transferring the title of the lands embraced in the list to the said railroad company or its assignees.

I return herewith the assignment by the Missouri Railroad Company to A. Caldwell (referred by you to this office on the 10th instant), to be considered in connection with the foregoing report. The following is a list of the papers transmitted herewith:

(1st.) Appraisement of improvements on unallotted lands.
(2.) Appraisement of allotted lands.
(3.) List of lands to be patented.
(4.) Notice from Delaware council.
(5.) Assignment to Caldwell.

Very respectfully, your ob'd't serv't,

C. E. MIX,
Act'g Com'r.

Motion for a Rule upon the Honorable Secretary of the Interior.

Now come the petitioners, The Delaware Indians, residing in the Cherokee nation, *et al.*, by Walter S. Logan, their attorney, and move the court for a rule upon the honorable Secretary of the Interior, requiring him to transmit to said court, to be used in the above case, copies of the following documents in said department, to wit:

A copy of a letter written by Robert H. Kern, dated St. Louis, Missouri, November 25th, 1895, addressed to the Hon. S. H. Mayes, principal chief, and the hon. national council of the Cherokee nation, together with a copy of the certification of the same by the assistant executive secretary of the Cherokee nation, which letter and certification are in possession of the Hon. Secretary of the Interior.

A copy of an act relating to a settlement by compromise of the case then pending in the courts of the United States at Washington, D. C., in which Moses Whitmire, trustee of the Cherokee freedman, is plaintiff and The Cherokee Nation and United States are defendants, a certified copy of which act is in possession of the Hon. Secretary of the Interior, signed S. H. Mayes, principal chief, dated — approved December 7th, 1895. A copy of the certification of said act by the assistant secretary of the Cherokee nation, which act forms Exhibit D in a report by W. J. McConnell of the "Cherokee compromise matter," dated January 24th, 1898, addressed to the Hon. Secretary of the Interior.

A copy of the agreement of Moses Whitmire with Robert H. Kern and J. Milton Turner, dated Washington, D. C., January 28th, 1896, signed by Robert H. Kern, J. Milton Turner, and Moses
486 Whitmire, which agreement is marked "Exhibit A 2" in report of W. J. McConnell, dated January 24th, 1898, of the "Cherokee compromise matter," addressed to the Hon. Secretary of the Interior.

A copy of an act to appropriate and pay certain moneys out of moneys arising from the sale of the Cherokee Outlet to the freedmen of the Cherokee nation which passed the senate of said nation on March 24th, 1896, and was concurred in by the council branch of the national council March 26th, 1896, and was approved by S. H. Mayes, principal chief, on March 27th, 1896.

A receipt signed Robert H. Kern and J. Milton Turner, per Robert H. Kern, acknowledging the receipt of $126,666 from D. W. Liep, treasurer of the Cherokee nation, dated Talequah, Indian Territory, August 15th, 1896, together with a copy of the certification of said receipt by the treasurer of the Cherokee nation, which receipt forms a part of Exhibit A 2 of the report of W. J. McConnell of the "Cherokee compromise matter," dated January 24th, 1898, addressed to the Hon. Secretary of the Interior.

A copy of the statement of the Cherokee freedman strip fund, as provided by act of the national council, approved March 27th, 1896, dated Talequah, Indian Territory, December 28th, 1897, certified by

D. W. Liep, treasurer Cherokee nation, together with a letter from the said D. W. Liep, dated Talequah, Indian Territory, December 28th, 1897, addressed to the Hon. W. J. McConnell, United States Indian inspector, and Hon. George E. Ross, assistant attorney, Interior Department, Talequah, Indian Territory.

A copy of a resolution of the Cherokee council, which forms Exhibit D 2 of a report of W. J. McConnell, United States Indian inspector, of the "Cherokee compromise matter," dated January 24th, 1898.

Dated New York, December 16th, 1899.

Respectfully, WALTER S. LOGAN,
Attorney for Plaintiffs.

Reply of Interior Department.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *February* 6, 1900.

The honorable the Chief Justice of the Court of Claims, Washington, D. C.

SIR: In response to the order of the court in the case of The Delaware Indians *versus* The Cherokee Nation, No. 21139, requesting that said court be furnished, for use as evidence on the trial of the above-entitled cause now pending in said court, certain papers (or duly authenticated copies of the same) supposed to be on file in the Interior Department, as set forth in the motion of counsel for the plaintiffs accompanying said rule, you are advised that said order of the court and accompanying rule were referred to the Commissioner of Indian Affairs on the 13th ultimo for consideration and report.

The department is now in receipt of the report of the acting Commissioner of Indian Affairs containing certified copies of such papers as are on file in the office of the Commissioner of Indian Affairs, which, together with a copy of the report of the acting Commissioner and said rule and motion, are enclosed herewith.

Respectfully, THOS. RYAN,
Acting Secretary.

487 DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *Feb.* 2, 1900.

The honorable the Secretary of the Interior.

SIR: I have the honor to acknowledge the receipt, by department reference for report, of a communication dated January 13, 1900, from Mr. John Randolph, assistant clerk of the Court of Claims, requesting that said court be furnished with certain described papers supposed to be on file in the department, for use as evidence in the cause No. 21139, entitled "The Delaware Indians, etc., plaintiffs, *vs.* The Cherokee Nation, defendant."

I also acknowledge the receipt of department letter of January 25, 1900, transmitting the report of Indian Inspector Wm. J. McConnell, dated January 24, 1898, and accompanying papers, on the Cherokee freedmen payment, for use in answering said call of the Court of Claims.

In reply I transmit herewith copies of the following-described papers found with the inspector's report:

1. A copy of a paper purporting to be a copy of a letter written by Rob't H. Kern, dated St. Louis, Mo., November 25, 1895, addressed to S. H. Mayes, principal chief, and the national council of the Cherokee nation, together with a copy of the certification of the same by the assistant executive secretary of said nation, which paper forms a part of an exhibit accompanying the report of W. J. McConnell, U. S. Indian inspector, dated January 24, 1898, to the Secretary of the Interior.

2. A copy of a paper purporting to be a copy of an act relating to a settlement by compromise of the case then pending in the courts of the United States, at Washington, D. C., in which Moses Whitmire, trustee of the Cherokee freedmen, is plaintiff, and The Cherokee Nation and The United States are defendants, signed S. H. Mayes, principal chief, dated — approved December 7, 1895, which paper forms a part of an exhibit of said report of Inspector McConnell.

3. A copy of a paper purporting to be a copy of an agreement of Moses Whitmire with Robert H. Kern and J. Milton Turner, dated Washington, D. C., January 28, 1896, signed by Rob't H. Kern, J. Milton Turner, and Moses Whitmire, which paper is marked "Exhibit A 2" of said report of Inspector McConnell.

4. A copy of a paper purporting to be a copy of a receipt signed by Rob't H. Kern and J. Milton Turner, per Robert H. Kern, acknowledging the receipt of $126,666 from D. W. Lipe, treasurer of the Cherokee nation, dated Tahlequah, Ind. T., August 15, 1896, together with a copy of the certification of said receipt by the treasurer of the Cherokee nation, which paper forms a part of Exhibit A 2 of said report of Inspector McConnell.

5. A copy of a paper purporting to be a copy of a statement of the Cherokee freedmen strip fund, as provided by an act of the national council of the Cherokee nation, approved March 27, 1896, dated Tahlequah, Ind. T., December 28, 1897, certified to by D. W. Lipe, treasurer of said nation, together with a copy of the original of a letter from said D. W. Lipe, dated Tahlequah, Ind. T., December 28, 1897, addressed to W. J. McConnell, United States Indian inspector, and George E. Ross, assistant attorney, Interior Department, Tahlequah, Ind. T., being a part of Exhibit G 2 of said report of Inspector McConnell.

6. A copy of a paper purporting to be a copy of a resolu-
488 tion of the Cherokee council in relation to the so-called compromise between the attorneys of the Cherokee freedmen and the executive department of the Cherokee nation, and creating a joint committee to investigate the charges set forth therein, which

paper is designated as Exhibit D 2 of the said report of Inspector McConnell.

In the call of the Court of Claims is a request for "a copy of an act to appropriate and pay certain moneys out of moneys arising from the sale of the Cherokee Outlet to the freedmen of the Cherokee nation, which passed the senate of said nation on March 24, 1896, and was concurred in by the council branch of the national council March 26, 1896, and was approved by S. H. Mayes, principal chief, on March 27, 1896." A copy of this act does not appear to be with the papers accompanying Inspector McConnell's report before mentioned, nor does there appear to be any data in the files of this office relative to the same. The only authoritative information in the possession of the office as to the text of said act is that contained in Senate Document No. 101, Fifty-fifth Congress, third session, pages 45, 46, and 47.

The communication from the assistant clerk of the Court of Claims is herewith returned, together with the report of Inspector McConnell and accompanying papers, and a copy of this report.

Very respectfully, your obedient servant,

W. A. JONES,
Commissioner.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *February* 2, 1900.

I, A. C. Tonner, acting Commissioner of Indian Affairs, do hereby certify that the papers hereto attached are true copies of papers purporting to be copies of the originals as the said copies appear on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed on the day and year first above written.

A. C. TONNER,
Acting Commissioner.

[SEAL.]

(The following document is also known as Plaintiffs' Exhibit T.)

ST. LOUIS, MO., *November 25th*, 1895.

To the Honorable S. H. Mayes, principal chief, and the honorable the national council of the Cherokee nation:

Soon after the rendition of the decree by the United States Court of Claims, at Washington, D. C., in the case of Moses Whitmire, trustee of the Cherokee freedmen, against the Cherokee Nation, it has in various ways come to myself and associates, until now we are inclined to believe that there is a prevailing sentiment in the nation and a desire of the better-thinking element of the Cherokee people to compromise and settle the matters of dispute involved in that case. It has been represented to us that the Cherokee nation as a people, now that the right

of the freedmen of the Cherokee nation to participate in the common property of the nation has been established by the decree of the court, are disposed to accept the situation and recognize fully the rights of the freedmen as Cherokee citizens, but that on the other
489 hand there is a widespread, if not controlling, prejudice against what is known as the "Wallace roll." We also know that these questions entered into and formed some of the political issues of the late election held in the nation for members of the national council, and also for the office of principal chief. We also know that these questions have been productive of serious friction between classes of citizens of the nation—the Cherokees of Cherokee blood on the one hand, and the freedmen on the other. For your information, we beg to say that many intelligent and disinterested citizens of the nation have from time to time discussed with us these matters as well as the theories and propositions of compromise of these matters of dispute. All these things have led myself and associates, who, as counsel represent the freedmen in the case referred to, to believe that terms honorable and fair to all for a compromise and settlement of all those matters of dispute ought to be reached and probably can be. On the one hand, it is conceded, as we understand the condition of the settlement in the nation, that if the freedmen are entitled to recover at all they are entitled to receive, not the sum of $256.34 *per capita*, or rather "not to exceed" that sum, but a sum equal to the aggregate amount heretofore disbursed to each Cherokee citizen of Cherokee blood, namely, the sum of $295.35, modified, of course, in particular instances by the dates of birth and death occurring between the dates of the several payments heretofore made with Cherokees of Cherokee blood. It has been asserted and claimed that names appear on the Wallace roll to a limited number which have no right to be there, but it is also conceded that there are freedmen in the nation whose names should be upon that roll, who are entitled to participate in the distribution whose names are not there. In these circumstances we understand that it is the desire of the nation to have a new, correct, and complete roll of the freedmen made for the purpose of determining in a full and final way the names and identity of the persons who, as freedmen and free colored persons and their descendants, are entitled by virtue of the decree referred to under the ninth article of the treaty of July 19th, 1866, to participate in the distribution of the funds now being held by the United States for the purpose of this suit, and that if this revised roll can be secured it is also their desire to have the freedmen whose names may appear upon this corrected or revised roll fully equalized with the Cherokees of Cherokee blood, and it is believed that if this can be accomplished the sources or causes of friction, hostility, and animosity now existing between these classes of citizens of the nation can be wholly and effectually blotted out, and that this can be more effectually done by a compromise of these matters than by further litigation of them.

The representatives of the freedmen have fully canvassed these matters, and in view of the assurances referred to that it is the de-

sire of the Cherokee people now to treat the freedmen as Cherokee citizens, fully entitled to all the rights of Cherokee citizens, and believing it to the interest of the freedmen as much as to the other Cherokee people to adjust in a friendly way the matters of dispute and controversy between them, we have decided to submit for your consideration, and with a view to a compromise of all these matters of dispute, the following proposition, all of which, however, is subject, of course, to the approval of the Court of Claims at Washington, and conditioned upon the enactment by you of such legislation as may be necessary to carry it into effect, namely:

The application of both sides for an appeal to the Supreme
490 Court from the decision of the Court of Claims to be withdrawn; the decree now entered in the case to be so modified that the aggregate of the recovery shall be made $1,300,000, the sum to be paid to each freedman to be $295.35 in lieu of the Wallace roll; the authenticated roll of the freedmen made by the Cherokee nation, as lodged with the Secretary of the Interior, known as the authenticated roll of 1880, to be accepted and treated as final, in so far as the names upon that roll appear, as to those persons and their descendants, for the purposes of a new, corrected, and completed roll of freedmen; a commission of three to be appointed, one selected by the Cherokee nation in such manner as it may provide, another by the trustee of the Cherokee freedmen, and a third by the judge of the United States district court for the western district of Arkansas, the persons so selected to be approved by the Court of Claims, and this commission, to be organized and authorized in such manner as the Court of Claims may see fit, to proceed to an ascertainment of the names, number, and identity of the freedmen and free colored persons entitled to participate in the distribution, and when made by this commission, or a majority of it, to be certified in the manner to be prescribed by the Secretary of the Interior for the purposes of disbursements. Before this commission the Cherokee nation as such shall be entitled to a representative by counsel, and so also shall be the freedmen, and the roll as made, completed, and corrected by this commission to be treated as the official roll upon which the disbursements are to be made. The compensation of the counsel of the trustee for the freedmen to be not in excess of the amount measured by his contract with them, but this to apply to the whole amount of the recovery and of the sum so taxed, the amount to be taxed against the Cherokee nation not to be in excess of four per cent. The balance of the fund recovered in the case, after the disbursement to the freedmen whose names shall appear upon the roll as corrected, revised, and completed by this commission, the payment of all costs incurred in the case, including the compensation paid for counsel fees, to be paid over to the Cherokee nation as soon as the disbursements to the freedmen *per capita* have been made.

If a compromise of these matters in dispute can be arranged on these lines, and the Cherokee nation will, by proper enactment, authorize it to be done, and will appoint such person or persons to act for it and to sign the necessary stipulations to carry into effect,

myself and associates will present the matter to the Court of Claims at Washington and recommend in behalf of the freedmen that the decree be so modified as to meet this proposition, and will do whatever may be necessary, with the approval of the court, to carry it into effect.

Trusting these matters will receive your early consideration, and that a compromise which will effectually and forever wipe out the political friction now existing in the nation flowing from the matters in dispute referred to, and believing it to the interest of our clients to secure by an amicable arrangement rather than by force their rights in the premises, I have the honor to respectfully submit the foregoing proposition.

ROB'T H. KERN,
Att'y of Record for Moses Whitmire,
Trustee of Cherokee Freedmen.

I, Robert T. Hanks, assistant executive secretary, do hereby certify that the aforegoing ten-page document is a true and correct
491 copy of the original as appears of record in the executive department of the Cherokee nation.

Given from under my hand and the seal of the Cherokee nation on this December 11th, 1895.

[Seal of Cherokee Nation.]

ROBERT T. HANKS,
Ass't Exec. Sec'y.

An act relating to a settlement by compromise of the case now pending in the courts of the United States, at Washington, D. C., in which Moses Whitmire, trustee of the Cherokee freedmen, is plaintiff and The Cherokee Nation and The United States are defendants.

Whereas under date of November 25th, 1895, Robert H. Kern, attorney of record for Moses Whitmire, trustee of Cherokee freedmen of Cherokee nation, has transmitted to the national council a proposition for a compromise of the case of Moses Whitmire, trustee of the freedmen of the Cherokee nation, *vs.* The Cherokee Nation and The United States, now pending in the United States Court of Claims at Washington, D. C.; and

Whereas a judgment has been rendered against the defendants in favor of plaintiffs in said suit, making a certain roll, known as the Wallace roll, containing three thousand five hundred and twenty-four names, the basis of a distribution of the money adjudged due; and

Whereas in the opinion of the Cherokee nation this said roll contains the names of persons not justly entitled to share in the distribution of said money and not embraced in the terms of the treaty made and ratified between the Cherokee nation and the United States; and

Whereas it is the opinion of the freedmen of the Cherokee nation that a more just roll can be made; and

Whereas it is the desire of the said nation to recognize the right of its *bona fide citizens* freedmen, under the ninth article of the treaty of 1866, in the *per capita* disbursements heretofore made to the Cherokees of Cherokee blood, from which its freedmen have been excluded; and

Whereas applications for appeal have been filed in the Court of Claims by both plaintiff and defendant, The Cherokee Nation in said suit from the decision in said cause to the Supreme Court of the United States; and

Whereas further litigation would involve a long delay in the payment of the money decreed to be paid to the said freedmen, and would entail great expense upon the nation; and

Whereas it is the wish of the nation to equalize its freedmen with the Cherokees in the distribution of the aforesaid moneys, and it being the wish of all parties to this suit that all litigation in reference thereto should be concluded in the said Court of Claims; and

Whereas by stipulation on file in said cause it is agreed between the parties to said suit that all persons whose names appear upon a certain roll, duly authenticated by the Cherokee nation as having been made by it in 1880 and filed with the Secretary of the Interior of the United States, are admitted by the Cherokee nation to be citizens thereof, and as there can be no controversy about said persons and their descendants being citizens of the said nation at that time:

Now, therefore, for the purpose of ending all litigation in reference to the matter in controversy in said suit, and to equalize
492 the Cherokee freedmen with the Cherokees in all disbursements made by the Cherokee- to themselves, and in order to correctly ascertain the number of freedmen entitled under the ninth article of the treaty of July 19th, 1866, to share in the distribution of the money found by this decree to be due said freedmen from the Cherokee nation.

Be it enacted by the national council, That the proposition hereinbefore referred to, and hereto attached, signed by Robert H. Kern, attorney of record, for Moses Whitmire, trustee of Cherokee freedmen, is hereby, for the purpose of compromise, accepted by the Cherokee nation and is made a part of this act, and full power and authority is hereby given to our attorney, E. C. Boudinot, in said case, appointed under authority of act approved September 24th, 1895, to act on behalf of the Cherokee nation before the Court of Claims to compromise the case of Moses Whitmire, trustee of Cherokee freedmen, *vs.* The Cherokee Nation and The United States, now before the Court of Claims in Washington, D. C., in accordance with the provisions of this proposition and this act, and by and with the consent of the Court of Claims, to arrange with plaintiff and the United States for a modification of the judgment heretofore rendered in said cause and to carry out the spirit of this act, and to further arrange that said judgment shall be so modified as to strike out

the binding force of the Wallace roll and the provision therein that the number of freedmen entitled to share in the distribution of said moneys shall be ascertained by the Secretary of the Interior from the said judgment, and in lieu thereof a provision shall be inserted in said judgment that the number of freedmen entitled to share in the distribution of the money mentioned in said decree shall be ascertained by three commissioners, one to be selected by the Cherokee nation, one by Moses Whitmire, trustee of the freedmen of the Cherokee nation, and one by the judge of the district court of the United States for the western district of Arkansas, and that these three commissioners shall be confirmed by the Court of Claims; that they shall be empowered by the court to ascertain the number of freedmen entitled to share in the distribution aforesaid; that a vote of a majority of said commissioners shall establish the identity of the freedmen entitled to share in the distribution of said money, and that in ascertaining the identity of freedmen so entitled either party shall be allowed by said commissioners to be represented by counsel learned in the law; that this commission shall accept the names of the persons which appear upon the aforesaid authenticated roll of 1880, furnished as aforesaid by the Cherokee nation to the Secretary of the Interior, and their descendants now living in the Cherokee nation, as conclusive evidence of the right and identity of said persons to share in the distribution of said money; that in ascertaining the number and identity of the freedmen so entitled these commissioners shall ascertain who of said freedmen were alive at the dates of disbursements complained of in the amended petition in said cause by the Cherokees to the exclusion of the freedmen, to wit, in the years 1886, 1891, and 1894; that the said commissioners shall proceed to the Cherokee nation, and there, after due notice given, hear evidence, pro and con, as to the identity of all other persons than those mentioned in the aforesaid authenticated roll of 1880 and their descendants residing in the Cherokee nation in ascertaining the number of said people who are entitled to share in the distribution of the moneys disbursed at the three last above-named dates. When this commission shall have ascertained,
493 either by a unanimous or majority vote of said commissioners, the names and number of said freedmen entitled to share in the distribution of the moneys found in favor of the plaintiff in this decree, they shall report the same to the Secretary of the Interior, specifically stating the names and number of said freedmen entitled to share in the distribution of moneys on each of the respective dates last above named; that the amount of money for which judgment shall be rendered in said cause in favor of plaintiff, and against the Cherokee nation, shall be the sum of one million three hundred thousand dollars ($1,300,000.00), with the provision that any surplus left, after distributing said money in accordance with the terms of this decree, shall become due and payable at once to the Cherokee nation, in accordance with the terms provided for in the agreement between the said nation and the Secretary of the Interior, referred to in said decree; that the Secretary of the Interior

shall proceed to disburse so much of the amount last named, less the expense with which said judgment is encumbered by the terms of this decree, to the persons so reported to him by said commissioners, or a majority of them, and shall make a just distribution of the same among said parties, but shall not pay to any one of said parties in excess of the sum of $295.35. The said attorney is authorized to consent that judgment may be entered in favor of plaintiff's attorney of record in said cause, in the sum of ten per cent. of the amount found in said judgment in favor of the plaintiff against the Cherokee nation, and to agree that four per cent. thereof shall be charged against the Cherokee nation, and paid out of the fund held by the Secretary of the Interior by virtue of the agreement between the Cherokee nation and the Secretary of the Interior referred to in this decree. The said attorney is further empowered and authorized by this act to do anything further that may be necessary to carry out the terms and spirit of this act, and agree that when this judgment shall be modified in accordance with the terms and spirit of this act no appeal, notice of appeal, or motion for a new trial or rehearing shall be taken by the Cherokee nation, or any other party to this suit, from the terms of the decree so modified; and the Cherokee nation shall be bound by any agreement made in accordance with this act. The attorney is further instructed to consent that the compensation of $1,500.00 shall be paid to each commissioner confirmed by the court as aforesaid, and that a further sum of $2,000 shall be allowed by said court as expenses of said commissioners in ascertaining the number of freedmen aforesaid, and that said sum shall be charged and paid, one-half by the Cherokee nation out of its funds held by the Secretary of the Interior aforesaid, and one-half shall be charged to and paid out of the moneys herein allowed in favor of the plaintiff, and that sum shall be paid upon presentation of proper certificate of expenditure, certified by said commissioners, by the Secretary of the Interior, and that the salaries of said commissioners shall be paid when they shall have completed their work and reported the names and numbers ascertained as aforesaid to the Secretary of the Interior; that said commissioners shall complete their labors within six months from the day of their confirmation as such commissioners by the Court of Claims; that all other provisions of said decree shall remain as they now are.

494 *Be it further enacted*, That the principal chief be, and he is hereby, authorized to appoint the commissioner herein provided for on part of the Cherokee nation whenever it shall become necessary, who shall be a Cherokee by blood, and a citizen; that our attorney, E. C. Boudinot, shall report to the principal chief as soon as the arrangements hereinbefore provided shall have been made and a compromise in accordance with the provisions of this act shall have been allowed and approved by the Court of Claims.

Be it further enacted, That our attorney, E. C. Boudinot, is hereby instructed to represent the Cherokee nation before the commissioners hereinbefore provided, and to defend the interests of the Cherokee nation before said commissioners at no further expenses to the

Cherokee nation than included in the fee already paid him in said case.

Provided, That the principal chief is hereby authorized to pay to the said E. C. Boudinot his necessary expenses while in actual service before said commission and in attending to the business of the nation in the said case by warrant, and an appropriation is hereby made for that purpose.

Approved, Dec. 7th, 1895.

S. H. MAYES,
Principal Chief, N. N.

I, Robert T. Hanks, assistant executive secretary, do hereby certify that the above and aforegoing ten-page document is a true and correct copy of the original as appears of record in the executive department of the Cherokee nation.

Given from under my hand and the seal of the Cherokee nation on this the 11th day of December, 1895.

[Seal of Cherokee Nation.]

ROBERT T. HANKS,
Ass't Exec. Sec'y.

(The following document is also known as Plaintiffs' Exhibit V.)

WASHINGTON, D. C., *January 28th*, 1896.

This agreement made and entered into the day and year above written between Moses Whitmire, trustee of the freedmen of the Cherokee nation, and Robert H. Kern and J. Milton Turner, of the city of Saint Louis, State of Missouri, witnesseth, to wit:

The said Moses Whitmire, acting as said trustee for said freedmen, hereby contracts and agrees to give said Robert H. Kern a sum of money equal to one-third of $400,000 for his services in having the said sum appropriated by the Cherokee national council or the Congress of the United States to equalize said freedmen with the Cherokee Indians in the three several payments of money to themselves mentioned in the suit of Whitmire, trustee, &c., *vs.* The Cherokee Nation *et al.*, now pending in the United States Court of Claims, at Washington, D. C., and the said Kern hereby accepts the said contract of employment and agrees to have said money appropriated as herein provided, and that if the same be not appropriated, then no charge shall be made under this agreement. It is expressly understood that the sum of money herein contracted to be paid said Robert H. Kern shall be paid by the officer of the law authorized to disburse said $400,000 out of the said sum of $400,000 under the act appropriating the same.

495 In witness whereof we have hereunto set our hands and seals the day and year above written.

ROBERT H. KERN.
J. MILTON TURNER.
MOSES (his x mark) WHITMIRE.

Witness to signature of Moses Whitmire, trustee, etc.:
MARIA L. RICHARDSON,
1416 *I St. N. W.*

Personally appeared before the undersigned, a notary public, the aforesaid Moses Whitmire, who, being duly sworn, makes oath and says that he executed the aforesaid instrument as trustee of the freedmen of the Cherokee nation, on the 28th day of January, 1896, for purpose herein mentioned.

MOSES (his x mark) WHITMIRE,
Trustee for Cherokee Freedmen.

Witness the signature of Moses Whitmire:

A. C. CUNNINGHAM.
C. L. HARNAGE.

Subscribed and sworn to before me this 13th day of Aug., 1896.

E. B. BENDER,
Notary Public.

TREASURY DEPARTMENT,
CHEROKEE NATION, IND. TER.,
TAHLEQUAH, I. T., *Aug. 15th*, 1896.

Received of D. W. Lipe, treasurer of the Cherokee nation, as provided by an act of the national council approved March 27th, 1896, and entitled "An act to appropriate and pay certain monies arising from the sale of the Cherokee Outlet to the freedmen of the Cherokee nation," the sum of one hundred and twenty-six thousand six hundred and sixty-six dollars, in full of all demands against the Cherokee nation, as per act above referred to and contract hereto attached.

ROBERT H. KERN,
Attorney of Record in Case Moses Whitmire, Trustee of Cherokee Freedmen, vs. Cherokee Nation et al., in Court of Claims of United States.

J. MILTON TURNER,
Per ROBERT H. KERN.

I hereby certify that the foregoing two pages of typewritten matter is a true copy of the contract made between Moses Whitmire, trustee, etc., for the Cherokee freedmen, and Robert H. Kern and J. Milton Turner, attorneys for the Cherokee freedmen before the Court of Claims at Washington, D. C., and also receipt for $126,666.00.

D. W. LIPE,
Treasurer Cherokee Nation,
Per ROB'T B. ROSS, *Sec'ty.*

Tahlequah, I. T., December 30th, 1897.

496 The following document is also known as Plaintiffs' Exhibit Z.

[D. W. Lipe, treasurer. Rob't B. Ross, sec'y of treasurer.]

TREASURY DEPARTMENT,
CHEROKEE NATION, IND. TER.,
TAHLEQUAH, I. T., *Dec. 28th*, 1897.

Statement of Cherokee Freedmen Strip Fund, as Provided by Act of the National Council Approved March 27th, 1896.

1896.			
Aug. 12.	To amount rec'd from Sec. of Int.		$380,000.00
Aug. 15.	By am't p'd Rob't H. Kern, att'y fees, 3 checks of $42,222.00 ea	$126,666.00	
1897.			
July and Aug.	By p'd freedmen, per pay rolls	236,215.20	
" " "	" general expenses in attending payment	9,346.80	
Sept. 30th.	" am't to bal. unclaimed shares	7,772.00	
		380,000.00	380,000.00
" "	To bal. on hand, unclaimed shares	7,772.00	

NOTE.—Division of—

1896, Aug. 12.	Am't bal. outlet fund rec'd		481,779.86
	" to Freedmen act, M'ch 27th, 1896	$380,000.00	
	" " Delawares, M'ch 30th, 1896	41,857.11	
	" " Shawnees, " " "	59,922.75	
		481,779.86	481,779.86

I hereby certify that the above is a correct statement, as stated. Given under my hand the day and date first above written.

D. W. LIPE,
Treasurer Cherokee Nation,
Per ROB'T B. ROSS, *Sec't'y*.

TREASURY DEPARTMENT,
CHEROKEE NATION, IND. TER.,
TAHLEQUAH, *Dec.* 28, 1897.

Hon. W. J. McConnell, U. S. Indian inspector, and Hon. Geo. E. Ross, assistant attorney, interior department, Tahlequah, I. T.

SIRS: Find enclosed statement of freedmen strip fund, per act of the national council of date March 27, 1896, as per your request of the 27th inst.

Very respectfully,

D. W. LIPE, *Treas. C. N.*,
P'r ROB'T B. ROSS, *Sec't'y*.

(The following document is also known as Plaintiffs' Exhibit A. A.)

Whereas it is currently reported and generally believed that the so-called compromise between the attorneys of the Cherokee freedmen and the executive department of the Cherokee nation and the subsequent approval of the same by the national council was the result of a conspiracy between the attorneys of said freedmen and the representatives of the Cherokee nation to rob the treasury of

$400,000 and to fix upon the Cherokee people a population of more than one thousand useless and degraded negroes to share their lands; and

Whereas it proclaimed throughout the length and breadth
497 of the land that the officials of the nation shared in the spoils wrung from the people by fraud and open corruption, and that the charges unchallenged are used against us by our enemies for the destruction of our government and the utter ruin of our people; and

Whereas one hundred and twenty-six thousand dollars of the $400,000 withdrawn from the Cherokee nation for other purposes than the payment to the freedmen, as contemplated by the act of the national council ratifying said agreement; and

Whereas the good name of the national council is thereby brought to shame and the officials of the Cherokee nation are branded as corruptionists and bribe takers and unfit to manage the trust in their hands:

Therefore be it resolved by the national council, That there be, and is hereby, created a joint committee of three members from the senate and four members from the council to investigate the charges set forth in the preamble of this resolution and to report their findings to the national council during the present session of the national council, and to the end that a full and complete investigation may be had; and they are authorized to send for persons and papers, and to administer oaths, and to punish for contempt and such other acts as may be necessary to the full performance of the duties herein imposed.

Motion for a Rule upon the Honorable Secretary of the Interior.

Now come the petitioners, The Delaware Indians, residing in the Cherokee nation, *et al.*, by Walter S. Logan, their attorney, and move the court for a rule upon the honorable Secretary of the Interior, requiring him to transmit to said court, to be used in the above case, copies of the following documents in said department, to wit:

I. A copy of a report, dated April 7, 1869, from N. G. Taylor, Commissioner, to Hon. J. D. Cox, Secretary of the Interior, recorded in the Indian Office in the Report Book No. 18, at page 271.

II. A copy of a letter marked "Del. H. 515," dated "Lawrence, Kansas, 6/22/1871," and signed "Enoch Hoag, supt.," and addressed to Hon. E. S. Parker, Commissioner.

III. A copy of a letter marked "Del. H. 515," dated "Quapaw special agency, Ind. Ter., June 1, 1871," signed "Geo. Mitchell, U. S. special agent," and addressed to Enoch Hoag, supt. Ind. aff'rs.

IV. A copy of a letter marked "Del. I. 664," dated "Washington, D. C., July 31, 1871," signed "C. Delano, Sec.," and addressed to "Friend Enoch Hoag, supt. Ind. aff'rs, Lawrence, Kansas."

Dated New York, March 19, 1901.

WALTER S. LOGAN,
Attorney for Plaintiffs.

Reply of Interior Department.

DEPARTMENT OF THE INTERIOR, F,
WASHINGTON, *April* 2, 1901.

Clerk of the Court of Claims.

SIR: Inclosed herewith you will find a copy of a communication from the Commissioner of Indian Affairs, dated March 30, 1901, transmitting certified copies of papers called for by the court
498 on March 23, 1901, in the case of The Delaware Indians *v.* The United States, 21139. The rule of the court is also inclosed herewith.

Respectfully,

THOS. RYAN,
Acting Secretary.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *March* 30, 1901.

The honorable the Secretary of the Interior.

SIR: I have the honor to acknowledge the receipt of department letter of March 26, 1901, enclosing for consideration, immediate report, and recommendation a communication from the Court of Claims requesting to be furnished for use as evidence in the suit of The Delaware Indians *et al. v.* The Cherokee Nation certain papers or copies thereof, as stated in the accompanying:

1. Copy of a report, dated April 7, 1869, from N. G. Taylor, Commissioner, to Hon. J. D. Cox, Secretary of the Interior, recorded in the Indian Office, in the Report Book No. 18, at page 271.

2. A copy of a letter marked "Del. H. 515," dated "Lawrence, Kansas, 6/22/1871," and signed "Enoch Hoag, supt.," and addressed to Hon. E. S. Parker, Commissioner.

3. A copy of a letter marked "Del. H. 515," dated "Quapaw special agency, Ind. Ter., June 1, 1871," signed "Geo. Mitchell, U. S. special agent," and addressed to Enoch Hoag, supt. Ind. aff'rs.

4. A copy of a letter marked "Del. I. 664," dated "Washington, D. C., July 31, 1871," signed "C. Delano, Sec.," and addressed to "Friend Enoch Hoag, supt. Ind. aff'rs, Lawrence, Kansas."

Certified copies of the above-mentioned papers are transmitted herewith, together with the communication from the Court of Claims, and it is respectfully recommended that they be transmitted to the said court.

Very respectfully, your obedient servant,

W. A. JONES,
Commissioner.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *March* 30, 1901.

I, W. A. Jones, Commissioner of Indian Affairs, do hereby certify that the papers hereto attached are true copies of the originals as the same appear of record and on file in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed on the day and year first above written.

[SEAL.]

W. A. JONES,
Commissioner.

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DEPARTMENT INTERIOR,
OFFICE INDIAN AFFAIRS, *April* 7, 1869.

Hon. J. D. Cox, Secretary Interior.

SIR: I have the honor to transmit herewith a letter from Lewis Downing, principal chief of the Cherokee nation, and H. D. Reese, chairman of the Cherokee delegation, dated the 27th ult., relative to a certain agreement between said nation and the Delaware tribe of Indians, and requesting that the Delaware bonds and funds, provided to be transferred by said agreement, be so transferred to the credit of the Cherokees as early as possible.

The agreement (copy herewith) referred to by Messrs. Downing and Reese was duly approved by the President on the 11th of April, 1867. It provides that the Delawares may select a quantity of land east of the line of the 96° west longitude, Cherokee nation, in the aggregate equal to 160 acres for each individual of the Delaware tribe who has been enrolled upon a certain register made by the said agent for said tribe, together with such other members of the tribe whose names may be added thereto within one month after the signing of the agreement, for which land the Cherokees are to be paid from the Delaware funds, now held by the United States, a sum equal to one dollar per acre, and to enable this payment to be made the Secretary of the Interior is authorized by the agreement to transfer to the Cherokee nation the necessary amount of United States bonds, held in trust for the Delawares, at their market value at the time of the transfer.

It is also agreed that the Delawares shall pay from their funds, in the possession of the United States, a sum of money which shall bear the same proportion to the Cherokee national fund that the number of Delawares who remove to the Indian country bears to the whole number of Cherokees residing in the Cherokee nation, fixing as a basis, on the part of the Cherokees, the amount of said Cherokee national fund at $1,678,000.

From papers and documents on file in this office it appears there were nine hundred and eighty-five of the Delawares who elected to remove. Allowing for each of these individuals one hundred and sixty acres of land, at a cost of one dollar per acre, and the amount

to be paid to the Cherokees by the terms of said agreement, for the land sold to the Delawares, will be $157,600.

By the census of the Cherokees, taken in 1867, there were 13,566 souls in that nation. Taking this number, the number of Delawares who elected to remove, and the amount of the Cherokee national fund as a basis of calculation, and the amount the Delawares would have to pay, to make their share of the national funds equal the amount of the Cherokees in proportion to the number of individuals in each tribe, is $121,834.65.

The stocks held in trust by the Government for the Delawares, as a "general fund," are as follows, viz:

State of Florida, at 7 per cent	$59,000.00
State of Georgia, at 6 per cent	2,000.00
State of Louisiana, at 6 per cent	4,000.00
State of Missouri, at 6 per cent	10,000.00
State of North Carolina, at 6 per cent	121,000.00
State of South Carolina, at 6 per cent	1,000.00
United States loan of 1862, at 6 per cent	210,300.00
500 United States issue to Union Pacific railway (E. D.), at 6 per cent	280,000.00
United States 5-20's 1867, at 6 per cent	26,400.00
Total	713,700.00

The Delawares who elected to remove, or most of them, have been in the Cherokee country about one year, occupying the lands which, by the terms of said agreement, were purchased from the Cherokees, and the latter are, consequently, desirous of having the matter concluded and finally disposed of, by the Delawares either paying the amount due from them or having a sufficient amount of their stocks placed to the credit of the Cherokee nation.

The matter is respectfully submitted for your consideration, and for such action in the premises as may be deemed necessary and advisable.

Your attention, in connection with this subject, is respectfully invited to office report of the 9th of February last, relative to a division of the Delaware funds.

Very respectfully, your ob'd't serv't,

N. G. TAYLOR, *Com'r.*

OFFICE SUPT. INDIAN AFFAIRS,
LAWRENCE, KANSAS, 6, 22, 1871.

Hon. E. S. Parker, Commissioner:

Referring to department letter 4, 17, directing this office to ask the Delawares resident upon Peoria lands to remove to the Cherokee reservation, I enclose herewith letter of Special Agent Mitchell (1st inst.) reciting their wrongs. Their understanding of the treaty, and calling the attention of the Government to the 14th article of the same,

asking what action had been had thereon. That their number on said Peoria lands is 330 and will probably be increased to 500, that they have arranged for purchase from the Peorias, and rather than return they will relinquish to the Cherokees the funds paid to that nation under the treaty. I enclose also their agreement. This office has uniformly urged the Delawares to *unity, harmony,* and *industry;* that they do not scatter. Having found so many of them located on the Neosho, I have deemed it best to encourage industrial labor and that their children be in school. This has been regarded as temporary.

Respectfully, ENOCH HOAG, *Supt*

QUAPAW SPECIAL AGENCY,
IND. TER., *June* 1, 1871.

Enoch Hoag, supt. Ind. aff'rs.

SIR: Your letter of the 29th ult., transmitting letter of acting Commissioner H. R. Crum in reference to certain Delaware Indians now stopping within this agency on the lands of the Confederate Peorias, etc., has been received.

In reply, I have to say that I have taken every opportunity to make these Delawares understand their true position and what was expected of them by the Government. They fully understand the whole subject, so far as the wishes of the Government are concerned. They claim that they were deceived by their headmen as to what their status would be in the Indian country. They say they
501 were led to believe that a tract of land would be set apart for their use in the Cherokee country. See article IV, Delaware treaty of 1866. (Just here I would say that my attention has been called by the Delawares to the XIV article of the same treaty, asking what action had been taken by the Government in reference to the fulfilling of the same, particularly the last clause of said article.) When they arrived in the country of the Cherokees they found that every place where they attempted to settle some Cherokee was found who pretended to own the claim and demanded pay for it. In one case a Cherokee man pretended to own five different claims and did actually sell them to the Delaware Indians.

James Simons, the head man of those who have come out of the Cherokee country, told me that he had paid three hundred dollars for a claim to one man, and he was afterwards driven off by other parties, several pistol shots being fired into the house, and this at a time when he could not see from the effects of sore eyes. This speculative trait of character manifested on the part of the Cherokees towards the Delawares is true, also, as to the Osages and Shawnees. The Delawares complain of the Cherokees introducing whiskey into their camps, more particularly at times when their money was being paid them; some of their people have been killed, others wounded. They also complain of partiality being shown by the Cherokee officers towards Cherokee offenders; finally, they say that they will never go back; rather than do so, they are willing to lose what has been paid the Cherokees.

The Delawares now within this agency number three hundred and thirty persons and are fully organized with chief and council. The chief says when all come out of the Cherokee country that intend doing so his band will number five hundred.

An agreement has been made with the Peorias, etc., for the purchase of the land that they bought of the Quapaw Indians, subject to the approval of the Government, a copy of which I enclose. These Delawares seem well pleased with their present location and are making considerable improvements. Their planting is mostly done for this season. It would be wrong to disturb them at this time.

Hoping that the department will cause a full investigation of the affairs of these Indians before resorting to compulsory measures,

I beg to remain your most ob't serv't,

GEO. MITCHELL,
U. S. Special Ag't.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *July 31st*, 1871.

SIR: Enclosed I transmit copy of a communication from the acting Commissioner of Indian Affairs dated the 28th inst., relative to certain Delaware Indians who appear to have withdrawn from the Cherokee nation and settled upon lands belonging to the Kaskaskias.

From the papers forwarded with your letter of the 22d inst., it seems that the representatives of the Delawares have entered into an agreement with the Kaskaskias, subject to the approval of the Government, to purchase a portion of their lands and permanently reside thereon; they further recite, through Agent Mitchell, certain wrongs alleged to have been practiced upon them by Cherokees as sufficient ground for separation from the tribe in the Cherokee country.

502 I have carefully considered the subject, and, in view of the fact that grave objections exist to my assenting to the arrangements proposed, now refer the subject to you for a report after the difficulties of the case have been considered on your part.

When the contracts of April 8th, 1867, between the Delawares and Cherokees was approved by the Government, it was with the distinct understanding that *all* the Delawares, except those electing to become citizens, were to remove and become part and parcel of the Cherokee nation, and certainly there is now no authority by which the department can permit a portion of the Delawares to withdraw at will beyond the operation of the laws of the Cherokee nation, under which, through their representatives, they voluntarily placed themselves.

Again, on the other hand, I am not aware that the Executive possesses the power to allow the Kaskaskias to dispose of their lands in the manner contemplated without the sanction of Congress, and, as it is the well-known policy of the Government to discourage roving

habits in the Indians, I feel that it would be extremely difficult in all such cases to gain the necessary permission from Congress for the Kaskaskias to alienate their lands to a band of Indians who, either from real or imaginary wrongs, had wandered from their proper homes, nor would it be the less difficult, in the face of the provision of art. X, Delaware treaty, July 4, 1866, to obtain from that body authority to divert, in payment for these lands, a portion of the funds now to the credit of the Delawares as a whole.

But, aside from these considerations, there is another which very forcibly impresses my mind, and it is to this that I wish particularly to direct your attention; it is the effect such a precedent might exert upon other Indian tribes similarly situated as the Delawares.

Before long the Government, it is presumed, will ratify an agreement between the Shawnees and Cherokees by which the Shawnees become merged into the Cherokee nation and assume a *fixed* location in the Cherokee country. Should the course of the Delawares be countenanced by the Government, I am apprehensive the example would exert an injurious influence upon the Shawnees, and possibly introduce discontent among the Osages, in fact, eventually lead to the division of tribes into fragments and threaten with destruction the wise and well-defined policy of the Government to concentrate all the members of each tribe and permanently locate them in the country best adapted to their wants.

As before remarked, I lay these objections to granting the request of the Delawares before you in order after full reflection you may be able to advise the department as to the best course to be pursued under the circumstances. When you shall have made your report the case will be submitted to the members of the Indian peace commission for an expression of their views, after which you will receive the necessary instructions as to your duty in the premises. For the present, the order of the Commissioner of Indian Affairs suspending the payment of funds due the Delawares will remain in force.

I am, sir, very respectfully, your ob't serv't,

C. DELANO, *Secretary.*

Friend Enoch Hoag, supt. Ind. affairs, Lawrence, Kansas.

503 *Motion for a Rule upon the Honorable Clerk of the United States Senate.*

Now come the petitioners, The Delaware Indians residing in the Cherokee nation *et al.*, by Walter S. Logan, their attorney, and move the court for a rule upon the honorable clerk of the United States Senate, requesting him to transmit to said court, to be used in the above case, a copy of the following document, namely:

A certain letter, dated Washington, D. C., March 18, 1890, addressed to the Committee on Indian Affairs, signed by J. B. Mays, principal chief of Cherokee nation, and the Cherokee delegates, John L. Adair and D. W. Bushyhead. This letter appears on pages 162,

163, and 164 of Senate Executive Document No. 18, Fifty-second Congress, second session. It occupies the last five lines of page 162, all of page 163, and the first fifteen lines of page 164 of said document.

August 4, 1899.

WALTER S. LOGAN,
Attorney for Pl'ffs, 27 William St.,
New York City.

WASHINGTON, D. C., *March 18th*, 1890.

The Committee on Indian Affairs:

The Delawares, resident in the Cherokee nation, Indian Territory, have a trust fund in the hands of the Government amounting to over eight hundred thousand dollars, the interest of which is paid to them semiannually.

They have at different times applied for the distribution of this fund. A renewed application is now made through their legally authorized representative, Charles Journeycake. This measure has practically received the unanimous approval of the Delawares who are *bona fide* citizens of the Cherokee nation. The 15th article of the treaty of 1866 between the United States and the Cherokee nation provides as follows: "The United States may settle any civilized Indians friendly with the Cherokees and adjacent tribes within the Cherokee country on unoccupied lands east of the 96° on such terms as may be agreed upon by any such tribe and the Cherokee, subject to the approval of the President of the United States, which shall be consistent with the following provisions, viz: Should any such tribe or band of Indians settling in said country abandon their tribal organization, there being first paid into the Cherokee national fund a sum of money which shall sustain the same proportion to the then existing national fund that the number of Indians sustain to the whole number of Cherokees, they shall be incorporated into and forever remain a part of the Cherokee nation on equal terms in all respects with native citizens."

On the 8th day of April, 1867, articles of agreement were entered into between legal representatives of the Cherokee nation and the Delaware tribe of Indians in accordance with the 15th article of the said treaty above quoted. Under the terms of this agreement the Delaware tribe of Indians agree to pay the Cherokee nation "a sum of money which shall sustain the same proportion to the existing Cherokee national fund that the number of Delawares, registered as above mentioned and removing to the Indian country, sustains to the whole number of Cherokees residing in the Cherokee nation."

504 The said agreement concludes as follows:

"On the fulfillment by the Delawares of the foregoing stipulations all the numbers of the tribe registered as above provided shall become members of the Cherokee nation, with the same rights and immunities and the same participation (and no other) in the na-

tional fund, as native Cherokees, save as hereinbefore provided. And the children hereafter born of such Delawares so incorporated into the Cherokee nation shall in all respects be regarded as native Cherokees."

The Delawares on their part have complied with all the conditions of this said agreement. They removed to the Cherokee nation in the year 1867, where they have since lived, and as stated are to "ever after remain a part of the Cherokee nation."

The status of the Delawares as citizens of the Cherokee nation is thus clearly defined.

As the legal representative of the Cherokee nation, we have been officially authorized and instructed by an act of our legislature to assist our Delaware brethren in their efforts to obtain a full and complete settlement with the Government, and we cheerfully comply with our instructions, fully convinced that the interests of the Delawares will be subserved by the distribution to them of the said fund.

We offer below some of our reasons in support of these views:

The Delawares are a stock raising and agricultural people, subsisting mainly as such. They have arrived at a state of civilization where an annuity is no longer necessary for their prosperity, and in our opinion are fully competent to dispose of their own money to the best advantage. Favorable opportunities for investment are everywhere present. The rapid improvement of our country makes it plainly apparent that all choice bodies of land will soon be occupied, and those of our citizens are fortunate who will have the means to locate and improve these lands before they are all taken up. Stock raising is there an established and lucrative business and is a splendid field for investment. Money can then be loaned on unquestioned security at double the interest the Delawares are now receiving from the Government. While the Delawares are scattered over a country seventy-five or eighty miles in length, the stated annuity that they are paid has in some respects a tendency to keep them a separate and distinct people, not in the interests of harmony and good feeling. We also believe that stated annuities have a tendency to encourage indolence and not self-reliance.

An ample school fund secures to our people all alike the blessings and advantages of education. The Cherokee nation has also a liberal and permanent fund for judicial and executive purposes, and no probable reason exists for the diminution of these funds. During the last Congress a distinguished member of that body opposed the proposed measure which was then being considered upon the grounds that the Delawares would spend their money and then become dependent upon the United States Treasury, clearly showing a misapprehension upon the subject, as they could never become so dependent unless the Cherokee nation should alike become dependent. Nor can the withdrawal of this fund from the hands of the Government in any way affect the pecuniary interests of the Cherokee nation, as the money asked for is owned solely by the Delawares,

a surplus of their original tribal interests remaining to them after they had purchased equal rights in the Cherokee nation.

505 Knowing the Delawares as we do, being personally acquainted with them, we feel fully justified in submitting the foregoing statement.

Very respectfully,

J. B. MAYS,
Principal Chief Cherokee Nation.
JOHN L. ADAIR,
D. W. BUSHYHEAD,
Cherokee Delegates.

I, Wm. R. Cox, secretary of the U. S. Senate, do hereby certify that the foregoing is a full and true copy of a certain letter dated Washington, D. C., March 18, 1890, addressed to the Committee on Indian Affairs, signed by J. B. Mays, purporting to be principal chief of Cherokee nation, and the Cherokee delegates, John L. Adair and D. W. Bushyhead, now on the files of this office.

[SEAL.] WM. R. COX, *Secretary.*

Attest:
Aug. 16th, 1899.

IV. DEFENDANT'S EVIDENCE.

Deposition of J. A. Scales, for Defendant, Taken at Webbers Falls, Ind. T., on the 21st Day of February, A. D. 1901.

Claimants' counsel, Kenneth S. Murchison; defendant's counsel, William T. Hutchings.

Examination by Mr. HUTCHINGS:

Question. What is your name?

Answer. J. A. Scales.

Question. State your age and residence.

Answer. I am 69 next June, and live near Webbers Falls, Cherokee nation.

Question. What is your citizenship?

Answer. A Cherokee by blood.

Question. How long have you resided in the Cherokee nation?

Answer. Well, I have been here since 1834.

Question. What offices or positions of trust have you held at any time under the Cherokee nation?

Answer. Well, I was an officeholder for 40 years. I believe I held all the offices I was eligible to except principal chief.

Question. What office under the judiciary?

Answer. Well, I was chief justice of the supreme court two terms.

Question. About how old were you when what was known as the Cherokee-Delaware agreement was made?

Answer. About 35.

Question. State what was the construction put on that agreement,

if you know, by the Cherokee people, and what information was given them, if any, in regard to the same by the parties who entered into that agreement on behalf of the Cherokee nation.

(The question is objected to as incompetent and as hearsay.)

Answer. Well, my impression is that they believed that the old Delawares were entitled to the 160 acres of land and that the young ones had all the rights of the native-born Cherokees.

506 Question. Was it the understanding that the children born of registered Delawares, after they came to the Cherokee nation and after the agreement was made, were to have any rights in excess of those that belonged to and pertained to native Cherokees?

Answer. No.

Question. Were you acquainted with William P. Ross?

Answer. Yes, sir; I was.

Question. If you ever had any conversation with William P. Ross, or heard him make any statement with reference to the rights that either the registered Delawares or their descendants had after the making of the agreement acquired by that agreement, state what it was.

(Objected to as incompetent, irrelevant, and immaterial.)

Answer. I don't remember that I ever did. I know I have heard him talk about it. I know after they entered that suit that was pending when the treaty was made that he seemed to think that they didn't have any right to the proceeds of the land as they had objected to the lands being valued when the Cherokee interest was assessed in making the treaty.

Question. What do you mean by the lands being assessed; what was that done for?

Answer. There was a value put on the land to ascertain the amount of property that the Cherokees had invested.

Question. Why did they want to know what the investments of the Cherokees was?

Answer. In order to ascertain their *pro rata* that they were to pay in. They contended at that time that the land didn't belong to the Cherokee; that we had already ceded it to the United States under the treaty of '66.

Question. Then, it was a fact, was it or not, that when the payment was made by Delaware *per capita* in order to equalize them with the Cherokees that the lands west of 96, then owned by the Cherokees, was not taken into consideration.

Answer. No.

Question. When these lands were afterwards sold to the Government by the Cherokees and the proceeds distributed to Delawares and Cherokees alike, what, if you remember, was the *pro rata* share received by each member of the families?

Answer. It was $265.

Counsel for complainants waive cross-examination.

J. A. SCALES.

UNITED STATES OF AMERICA, }
Indian Territory, Northern District. }

I, Clara Mitchel Wood, a notary public within and for the northern district of Indian Territory, certify that at the time and place aforesaid J. A. Scales, a witness on behalf of the defendant in the above-entitled cause, was sworn by me before any question was put to him, to tell the truth, the whole truth, and nothing but the truth, relative to said cause, and that his answers were taken down by me, and that his deposition as aforesaid was read over to and signed by him before me at the time and place aforesaid.

In witness whereof I have hereunto set my hand and affixed my seal this 21st day of February, 1901.

[SEAL.] CLARA MITCHEL WOOD,
Notary Public.

507 *Deposition of Robert B. Ross, for Defendants, Taken at Parkhill, Ind. T., on the 22d Day of February, A. D.* 1901.

Claimants' counsel, Kenneth S. Murchison; defendants' counsel, William T. Hutchings.

ROBERT B. ROSS, having been first duly sworn, deposes as follows:

Question. State your age and residence.

Answer. My age is 55, my last birthday; my residence Parkhill, Cherokee nation.

Question. What is your citizenship?

Answer. My citizenship is Cherokee.

Question. What relation are you to the John Ross who was for so long time chief of the Cherokees?

Answer. Grandson.

Question. What relation are you to William P. Ross?

Answer. He is a second cousin of mine.

Question. Were you well acquainted with William P. Ross?

Answer. Yes, sir.

Question. How long has he been dead?

Answer. It was in '91 he died; about ten years ago.

Question. Were you associated with him much, William P. Ross, about the time of the making of the Delaware-Cherokee agreement and during the years thereafter?

Answer. Yes, sir; we were associated together ever since the war.

Question. Did you ever hear him discuss that agreement and what he intended?

Answer. More particular after—there was a dispute got up as to the matters of the adopted citizens that participated in the payments here—that question came up.

(Counsel for the complainant- objects to the answer of the witness as not responsive to the question.)

Question. What statements at any time did you ever hear him make about the rights which were intended to be given and were given to the Delawares in that agreement?

(Counsel for complainants objects to the question as irrelevant, immaterial, and incompetent.)

Answer. I heard him speak on several occasions with reference to that, both publicly and privately; that is, the views on that point were to the effect that the Delawares were entitled to citizenship here; that is, the registered Delawares were entitled to the 160 acres as long as they were living here; that if there should happen to be a division made while the original Delawares were living that they would be entitled to the 160 acres; otherwise if they died it all went back to the nation—the property—just like the native Cherokee.

Question. Well, what was to be the status of the personal property of these registered Delawares?

Answer. They were to be citizens and to enjoy all the rights and privileges of native Cherokees.

Question. Were they to get any more or any less?

Answer. No, sir; they were to get no more than the native Cherokees.

Question. Has there ever been since that agreement was made any discrimination against the Delawares as to the political rights in any way?

508 Answer. There was some discrimination in reference to using the money——

Question. Political rights, I mean?

Answer. No, sir.

Question. Have they not voted for members of the council and elected their own people as members of the council just like Cherokees?

(Counsel for the complainants objects to the foregoing question as incompetent, immaterial, and calling for a statement of facts not shown to be peculiarly within the knowledge of the witness.)

Answer. Yes, sir.

Question. Do you know of your own knowledge whether or not Delaware citizens of the Cherokee nation have ever confined themselves to 160 acres apiece, or whether or not they have gone upon the public domain and made improvements and inclosures of just as much land as they saw fit, just like other Cherokee citizens?

(Counsel for complainants objects to the question as irrelevant and immaterial.)

Answer. Yes, sir.

Question. What official positions have you ever held in the Cherokee nation?

Answer. Well, I have had various positions—clerk, sheriff, member of the council, delegate to Washington, secretary and treasurer, commissioner of the treaty to the Government.

Question. Do you know whether or not the Delawares ever made any claim to any rights in the Cherokee nation other than those you testified about until within the last four or five years?

Answer. No, sir.

Cross-examination is waived by counsel for the complainants.

ROB'T B. ROSS.

UNITED STATES OF AMERICA, }
Indian Territory, Northern District. }

I, Clara Mitchel Wood, a notary public within and for the northern district of the Indian Territory, certify that at the time and place aforesaid Robert B. Ross, a witness on behalf of the defendant in the above-entitled cause, was sworn by me before any question was put to him to tell the truth, the whole truth, and nothing but the truth relative to said cause, and that his answers were taken down by me, and that his deposition as aforesaid was read over to and signed by him before me at the time and place aforesaid.

In witness whereof I have hereunto set my hand and affixed my seal this 22d day of February, 1901.

[SEAL.] CLARA MITCHEL WOOD,
Notary Public.

509 Upon a rule of the Court of Claims upon the Secretary of the Interior there was filed in the Court of Claims two pay rolls, one showing the payment of $406,171.32 in the year 1892 to the Delawares, and one showing the payment of $459,648.90 also to said Delawares, in the year 1894. Said payments are referred to in the testimony and said pay rolls are not printed as they are very voluminous, and it is consented that the foregoing statement be used in place thereof.

Pursuant to a rule upon T. M. Buffington, chief of the Cherokee nation, the following report on the auditor's office frauds was filed in the Court of Claims:

510 & 511 APPENDIX A.

Report on Auditor's Office Frauds.

MUSCOGEE, INDIAN TERRITORY, *June* 12, 1900.

Hon. T. M. Buffington, prin. chief, Tahlequah, Ind. Ter., Cherokee nation.

SIR: In compliance with an act of the national council, approved December 15, 1899, and approved by the President of the United States January 13, 1900, entitled "An act providing for the investigation of the irregularities reported by the committee on claims to have been found in the auditor's office," the undersigned, your com-

mission, duly appointed and commissioned, have the honor to report:

In performance of the duties imposed upon us we have been confronted with many obstacles, some of which we might herein mention:

First. Upon investigation, we find that the reports of the district clerks of the several districts of the Cherokee nation are by no means complete; either there have been many fiscal quarters during which there was nothing to report or the clerks have failed to report them. The law requiring the clerks to report monthly to the principal chief of the Cherokee nation was not passed until about the year 1896, and even these reports we find very incomplete.

Second. The records of the several clerks of the several districts of the Cherokee nation, of certificates issued in their districts have not all been turned in to the executive department of the Cherokee nation as required by law, and among those that have been turned in, we have been unable to find a complete record of certificates issued during the several months and quarters in the several districts respectively; we have, therefore, been com-
512 pelled to rely upon the copies transcribed in the auditor's record of the "Clerk's reports," and whether or not these are true and correct copies of the original reports of the several districts during the last six years, or that they have been changed, modified or enlarged upon, your commission has been unable to determine.

With reference to the reported breaking into the office of the auditor and taking therefrom large amounts of certificates and relative to fraudulent claims, this commission has spared no expense and has used every available means to secure the testimony of witnesses relative thereto. The testimony of such witnesses you will find hereto attached for your information, and is made a part of this report. Many of these witnesses have lived a great distance from the capital and in different parts of the Cherokee nation, and in securing their attendance and procuring their testimony the commission has been necessarily delayed in its work, and has had to use a considerable part of the appropriation on account thereof. In some instances we have been compelled to visit them at their homes.

Unfortunately, for the Cherokee nation and for the progress of this investigation, the Cherokee national council by its act—

"That after claims have passed the inspection of the committee on claims, and have been reported upon, and after the tickets have been audited and cancelled, all certificates composing such claims were required to be burned in the presence of the senate,"—

thus destroying the best evidence of fraud that might have been perpetrated upon the Cherokee people. Again, during the administration of Auditor Mayfield, in the year 1891, the precedent with reference to the registration of claims was changed. Prior to this time every certificate, showing the number, the amount, and to whom issued, comprising such claims were correctly recorded upon

the record of claims in the auditor's office by the auditor,
513 thus showing every item upon which these claims were based, but since the administration of Mayfield, the precedent, as has already been stated, is different. We find nothing recorded upon the record of claims upon which these claims might be based, the only reference made thereto being the number of the claim, the party claiming and the amount claimed.

The changing of this precedent and the burning of the certificates themselves has made it impossible for a satisfactory investigation by this commission of irregularities which might have occurred in the accounts of the auditor.

That there have been many warrants issued based upon fraudulent claims there can be no question, as may be seen by the following statement:

During the last six years, beginning third Monday in November, 1893, there *has* been, based upon national certificates, warrants issued upon the general fund in amounts as follows:

December 11, 1893	$29,965.05
December 7, 1894	55,284.52
December 13, 1895	46,050.25
December 17, 1895	646.00
December 15, 1896	43,128.95
December 1, 1897	45,126.90
December 10, 1898	40,110.20
Total number of warrants issued during the period	$260,311.87

We find that the certificates issued by the several clerks of the several districts during the past six years, beginning the third Monday in November, 1893, — as follows:

Certificates Issued by the District Clerks.

Summary for the year 1894:

First quarter for fiscal year	$9,749.00	
Second quarter for fiscal year	19,380.75	
514 Third quarter for fiscal year	17,761.25	
Fourth quarter for fiscal year	30,990.00	
Total expense for the fiscal year 1894		$77,881.00

Summary for the year 1895:

First quarter for the fiscal year	$26,231.50	
Second quarter for the fiscal year	22,416.75	
Third quarter for the fiscal year	11,759.25	
Fourth quarter for the fiscal year	19,686.00	
Total expense for the fiscal year		80,093.50

Summary for the fiscal year of 1896:

First quarter for the fiscal year	$12,279.25	
Second quarter for the fiscal year	17,201.75	
Third quarter for the fiscal year	11,307.00	
Fourth quarter for the fiscal year	26,140.95	
Total expense for the fiscal year 1896		67,028.95

Summary for the fiscal year 1897:

First quarter for the fiscal year	$8,991.00	
Second quarter for the fiscal year	17,603.25	
Third quarter for the fiscal year	16,160.25	
Fourth quarter for the fiscal year	29,406.90	
Total expense for the fiscal year 1897		72,161.40

Summary for the fiscal year 1898:

First quarter for the fiscal year	$10,351.00	
Second quarter for the fiscal year	15,954.80	
Third quarter for the fiscal year	9,368.81	
Total expense for the fiscal year 1898		*35,674.61

515 Recapitulation for the six years:

Certificates issued for the year 1894	$77,881.00
Certificates issued for the year 1895	80,093.50
Certificates issued for the year 1896	67,028.95
Certificates issued for the year 1897	72,161.40
Certificates issued for the year 1898	35,674.61
Total number of certificates issued for the past six years	$332,839.46

From this grand total of certificates issued the following items must be deducted:

Certificates registered during the past six years but not yet audited	$14,760.97
Amount of private claims audited by A. A. Taylor between council 1898 and November, 1899, not yet appropriated	13,564.80
Amount of private claims audited by senate committee during council of 1899 not yet appropriated	3,860.50
Certificates audited as revenue November, 1893	516.00
Certificates audited as revenue for the years 1894 and 1895	75,998.00

* The jurisdiction of the Cherokee courts expired here and no further certificates issued.

Certificates audited as revenue for the year 1896.....	36,307.00
Certificates audited as revenue for the year 1897.....	26,862.15
Certificates audited as revenue for the years 1898 and 1899.....	5,022.21
Total amount.....	$266,893.03
Leaving a balance on which warrants might lawfully have been based of.....	65,946.43
Showing a balance of illigitimate claims, and for which warrants have been drawn of.....	194,365.44

This item is a great loss to the Cherokee nation, and accounts for a large per cent. of the public debt.

In order to locate these fraudulent claims we have not only examined the different records relative thereto, but we have had the testimony of several witnesses.

By reference to the testimony of J. C. Dannenberg, (pp. 31 to 34 inclusive); T. W. Triplett (pp. 38 to 44 inclusive); and W. M. Gulager (pp. 36 to 38 inclusive) of the evidence herewith submitted, see law, p. 79; you will find some light *light* upon this subject.

The evidence tends to show that the amount of tickets referred to by these witnesses of $4,632 were unlawfully, if not fraudulently, issued, and were refused registration by the auditor. As to why this claim was passed by the council and made into these warrants, numbering B 79, 80, 81 and 82, this commission has been unable to determine. We find from the record of the clerk's reports in the office of the auditor entries of certificates issued by some of the district clerks, which in the opinion of your commission are irregular and unlawful. For example, the clerk of Tahlequah district issued certificates in the amount of ($50) fifty odd dollars to C. D. Pendleton and A. A. Taylor for "refreshments" at the same time and in the same case. While the law provided that the sheriff may furnish jurors with the necessary board and refreshments, we do not think it contemplated anything more than ordinary meat and drink, and certainly $50 or more could not be required to furnish water for the jury. Their board was provided for in other certificates.

Section 63 of the Compiled Laws of the Cherokee nation of 1892, providing:

"Sheriffs, when an arrest shall be made of a person charged
517 with a felony, the prisoner shall be securely guarded until convicted or acquitted, etc." has been repealed by the national council. Nevertheless, since its repeal, hundreds of dollars in a single case of an arrest and detention of a prisoner has been reported by the sheriffs and certificates issued therefor by the clerks, passed the inspection of the auditor, committee on claims, and made into warrants.

The issuing of such certificates, in the opinion of your commission, is unwarranted by law. These are some of the irregularities that appear but, unfortunately for the Cherokee nation, all these un-

lawful and irregular certificates have been destroyed and there remains no evidence by which this commission has been enabled to determine what warrant, or warrants were issued therefor.

With reference to the breaking into of the office of the auditor and taking therefrom of a large amount of certificates, the evidence which your commission has been able to obtain tends to show that said office was unlawfully entered and that a large amount of certificates were either destroyed by fire or stolen away.

That between Saturday afternoon of December 2 and Monday morning, December 4, 1899, there were three entries made upon the record of claims without the knowledge or consent of the committee on claims, or the incoming auditor.

Those items are:

T. A. Chandler	$1,007.00
W. A. Markham	1,300.00
W. W. Hastings	1,731.00

Mr. A. A. Taylor, in his testimony, admits making these entries.

The testimony of T. M. Knight, page 3; R. B. Stan, pages 48 and 49; Stephen Peak, pages 56 to 58, inclusive; E. N. Washbourn, pages 74 and 75, of the evidence herewith submitted, tends to show that these items were made and the missing certificates burned at the time referred to above, and that Mr. A. A. Taylor was in
518 the office on Monday morning, December 4, 1899, before business hours, and had a fire in the stove and the room warm.

The testimony of E. N. Washbourn, pages 74 and 75, inclusive, of the evidence, in the opinion of your commission, explains one of the methods used by the auditor in his speculations in certificates. Mr. Washbourn says that numbers 14, 10 and 18 of national certificates of Delaware district, issued June 30, 1898, for ($6) six dollars each, *was* audited by himself through the regular process, and afterward he identified them in circulation without any sign of cancelation upon their face. This would indicate that these certificates, instead of being canceled and burned in the presence of the senate, as the law directs, were put into circulation again by the auditor.

The testimony of Waddie Hudson, pages 60 and 61 of the evidence herewith submitted, identifies certain forms of blanks furnished by him to the Cherokee nation for the issuance of certificates, which blanks, Mr. Hudson says, were printed September 22, 1897, and January 1, 1898. Many of these blanks bearing prior dates have been used by Mr. Triplett as clerk of the Tahlequah district for the issuance of certificates. Mr. Triplett was then out of office, having retired in the spring of 1897. Mr. Triplett's signature of these certificates is identified by Mr. Hudson, and also by J. C. Dannenberg.

We find that according to Mr. Taylor's testimony that as late as in the fall of 1899 Mr. Triplett presented certificates for registration, which upon their face appeared recently issued, and upon investi-

gation were found to be duplicates. (See A. A. Taylor's testimony, page 77.)

It appears from the testimony that all these large claims that are now pending the action of the senate are based upon national certificates purchased from A. A. Taylor; we therefore think it advisable that action upon all claims now pending, with the exception of those referred to in the testimony of J. R. Hastings, chairman
519 of committee on claims, as having been approved by his committee, be deferred until satisfactory evidence is shown as to their merit.

We further recommend that the United States Indian agent be asked to defer payment of the following national warrants:

No. B 79, issued to T. W. Triplett for	$560
No. B 80, issued to T. W. Triplett for	1,422
No. B 81, issued to W. M. Gulager for	1,200
No. B 82, issued to W. M. Gulager for	1,450
Total	$4,632

And that the national council, when it convenes in regular session in November, abolish the office of auditor of public accounts and that the records be placed in the custody of the executive department of the Cherokee nation.

Respectfully submitted,

C. V. ROGERS,
WILSON O. BRUTON,
Commissioners.

Approved:
J. W. ZEVELY,
Special Inspector.

EXECUTIVE OFFICE, CHEROKEE NATION,
TAHLEQUAH, IND. TER.

I, B. W. Alberty, assistant executive secretary of the Cherokee nation, do hereby certify that the foregoing four and a fraction pages, is a true copy of the report made by C. V. Rogers and Wilson O. Bruton, commissioners appointed to investigate the "irregularities of the auditor's office," as provided by an act of the national council of the Cherokee nation, approved by the principal chief December 15th, 1899, and by the President of the United States Janu-
520 ary 13th, 1900, to the principal chief of the Cherokee nation, and is now on file in the office and in my custody.

Given under my hand and the seal of the Cherokee nation this the 16th day of December, 1901.

[Seal of the Cherokee Nation.]

B. W. ALBERTY,
Assistant Executive Secretary, Cherokee Nation.

The evidence is voluminous and I have not included it in this copy.

B. W. ALBER-Y, *Ass't Sec.*

521 V.—This case having been argued before the Court of Claims and due deliberation having been had, the court rendered the following opinion:

VI.—*Opinion of the Court.*

(Decided February 2, 1903.)

Court of Claims.

THE DELAWARE INDIANS RESIDING IN THE CHEROKEE Nation, as a Tribe and Individually; George Bullette, Henry Armstrong, John H. Secondyne, John Young, John Sarcoxie, Jr., Individual Delaware Indians Residing in the Cherokee Nation, and the Business Committee of Such Delaware Indians, John Bullette and Richard C. Adams, Individual Delaware Indians Residing in Said Cherokee Nation and the Representatives of Said Delaware Indians and Said Business Committee, Suing on Behalf of Themselves and All Other Delaware Indians Now or Lately Residing in Said Cherokee Nation and the Children, Descendants, Heirs at Law, and Personal Representatives of All the Deceased Delaware Indians Whose Names Appear upon the Register of Delaware Indians Made in February, 1867, by John G. Pratt, the United States Indian Agent for the Delaware Indians, and on File in the Department of the Interior of the United States, and Known as the "Delaware Register," Plaintiffs,

against

THE CHEROKEE NATION, Defendants.

No. 21139.

WELDON, J., delivered the opinion of the court:

By authority of an act of Congress approved June 28, 1898, entitled 'An act for the protection of the people of the Indian Territory, and for other purposes," (30 Stat. L., p. 490), the Delaware Indians residing in the Cherokee nation were authorized and empowered to bring suit in the Court of Claims within sixty days after the passage of said act against the Cherokee nation for the purpose of determining the rights of said Delaware Indians in and to the lands and funds of said nation under their contract and agreement with the Cherokee nation, dated April 8, 1867.

The twenty-fifth section of said act is as follows, to wit:

"That before any allotment shall be made of lands in the Cherokee nation there shall be segregated therefrom by the commission heretofore mentioned, in separate allotments or otherwise, the one hundred and fifty-seven thousand six hundred acres purchased by the Delaware tribe of Indians from the Cherokee nation under agreement of April eighth, eighteen hundred and sixty-seven, subject to the judicial determination of the rights of said descendants and the Cherokee nation under said agreement. That the Delaware
522 Indians residing in the Cherokee nation are hereby authorized and empowered to bring suit in the Court of Claims of the United States, within sixty days after the passage of this act, against the Cherokee nation, for the purpose of determining the rights of said Delaware Indians in and to the lands and funds of said nation under their contract and agreement with the Cherokee nation, dated April eighth, eighteen hundred and sixty-seven; or the Cherokee nation may bring a like suit against said Delaware Indians; and jurisdiction is conferred on said court to adjudicate and fully determine the same, with right of appeal to either party to the Supreme Court of the United States."

In pursuance of the provisions of said statute the complainants, The Delaware Indians, filed a petition within the time limited in the statute, in which petition are alleged certain rights of the Delaware Indians and the violation of those rights by the Cherokee nation. To the petition, the defendant Cherokee Nation filed an answer admitting some of the allegations of the complainants and denying others which will be hereafter noted.

In the fourth article of the petition it is averred that on the 8th of April, 1867, articles of agreement were made between the Cherokee nation, represented by certain delegates duly authorized as parties of the first part, and the Delaware tribe of Indians represented by proper delegates duly authorized, as parties of the second part, which agreement was approved by the President of the United States April 11, 1867. The material portions of such agreement are as follows:

"Whereas by the fifteenth article of a certain treaty between the United States and Cherokee nation, ratified August 11, 1866, certain terms were provided, under which friendly Indians might be settled upon unoccupied lands in the Cherokee country east of the line of 96° of west longitude, the price to be paid for such lands to be agreed on by the Indians to be thus located and the Cherokee nation, subject to the approval of the President of the United States; and whereas by a treaty between the United States and the Delaware tribe of Indians, ratified August 10, 1866, the removal of the said Delawares to the Indian country south of Kansas was provided for; and, in the fourth article whereof, an agreement was made by the United States to sell to the Delawares a tract of land, being part of a tract the cession of which by the Cherokees to the United States was then contemplated; and whereas no such cession of land was made by the Cherokees to the United States, but, in lieu thereof, terms were provided, as hereinbefore mentioned, under which friendly Indians might be settled

upon their lands; and whereas a full and free conference has been had between the representatives of the Cherokees and the Delawares, in view of the treaties herein referred to, looking to a location of the Delawares upon the Cherokee lands and their consolidation with said Cherokee nation:

"Now, therefore, it is agreed between the parties hereto, subject to the approval of the President of the United States, as follows:

"The Cherokees, parties of the first part, for and in consideration of certain payments, and the fulfillment of certain conditions hereinafter mentioned, agree to sell to the Delawares, for their occupancy a quantity of land east of the line of the 96° west longitude, in the aggregate equal to one hundred and sixty acres for each individual of the Delaware tribe, who has been enrolled upon a certain
523 register made February 18, 1867, by the Delaware agent, and on file in the Office of Indian Affairs, being the list of Delawares who elect to remove to the 'Indian country,' to which list may be added, only with the consent of the Delaware council, the names of such other Delawares as may, within one month after the signing of this agreement, desire to be added thereto, and the selections of the lands to be purchased by the Delawares may be made by said Delawares in any part of the Cherokee reservation east of said line of 96° not already selected and in possession of other parties, and in case the Cherokee lands shall hereafter be allotted among the members of said nation, it is agreed that the aggregate amount of land herein provided for the Delawares, to include their improvements according to the legal subdivisions when surveys are made (that is to say, one hundred and sixty acres for each individual), shall be guaranteed to each Delaware incorporated by these articles into the Cherokee nation, nor shall the continued ownership and occupancy of said land by any Delaware so registered be interfered with in any manner whatever without his consent, but shall be subject to the same conditions and restrictions as are by the laws of the Cherokee nation imposed upon native citizens thereof.

"Provided, that nothing herein shall confer the right to alienate, convey, or dispose of any such lands except in accordance with the constitution and laws of said Cherokee nation. * * *

"And the said Delawares further agree that there shall be paid from their funds now or hereafter to come into the possession of the United States a sum of money which shall sustain the same proportion to the existing Cherokee national fund that the number of Delawares registered as above mentioned and removing to the Indian country sustains to the whole number of Cherokees residing in the Cherokee nation. * * *

"And that there may be no doubt hereafter as to the amount to be contributed to the Cherokee national fund by the Delawares, it is hereby agreed by the parties hereto that the whole amount of the invested funds of the Cherokees, after deducting all just claims thereon, is $678,000.

"And the Delawares further agree that in calculating the total amount of said national fund there shall be added to the said sum

of $678,000 the sum of $1,000,000, being the estimated value of the Cherokee neutral lands in Kansas, thus making the whole Cherokee national fund $1,678,000; and this last-mentioned sum shall be taken as the basis for calculating the amount which the Delawares are to pay into the common fund. * * *

"All cash, and all proceeds of stocks, whenever the same may fall due or be sold, received by the Cherokees from the Delawares under the agreement, shall be invested and applied in accordance with the 23d article of the treaty with the Cherokees of August 11, 1866.

"On the fulfillment by the Delawares of the foregoing stipulations, all the members of the tribe registered as above provided shall become members of the Cherokee nation, with the same rights and immunities, and the same participation (and no other) in the national funds, as native Cherokees, save as hereinbefore provided.

"And the children hereafter born of such Delawares so incorporated into the Cherokee nation shall, in all respects, be regarded as native Cherokees."

Signed. * * *

524 At the outset of the discussion of the legal and equitable rights of the parties in this proceeding, and the proper determination of the issue presented by the record, we must look to the statute by which the court is given jurisdiction, as by that law, the power of the court is measured and determined. Beyond it we have no power of adjudication. There is no controversy or question as to the form of the proceeding and rightful character of the petitioners. Some objection was made as to the want of proper parties as complainants, but that contention was abandoned in the trial of the case.

The statute gives the power to either party to bring suit in this court for the purpose of determining the estate or interest of the Delaware Indians in and to the land and funds of the nation under their contract and agreement with the Cherokee nation dated April 8, 1867. The purpose of the statute is to settle by judicial adjudication the rights of the respective parties in and to the lands and funds of the Cherokee nation.

In order to settle those rights, we must determine by construction of the agreement the extent of interest—the estate which the Delawares acquired in the land granted to them by the Cherokee nation, and their rights in the funds of the nation as affected by the action of the political department of the government of the Cherokees.

The jurisdiction of the court as to the subject-matter of investigation is defined by the statute in the words following, to wit: "For the purpose of determining the rights of said Delaware Indians in and to the lands and funds of said nation under their contract and agreement with the Cherokee nation dated April 18, 1867." Under that provision of the law two questions arise: First, What are the rights and equities of the Delaware Indians in and to the land sold or agreed to be sold by the terms of the agreement made as aforesaid; and second, What are the rights and equities of the Delaware

Indians in and to the funds of the Cherokee nation as affected by the alleged misconduct of the respondent?

We will consider the questions in the order stated, reciting so much of the bill as is necessary to the development of the issue.

The fifth paragraph of the petition alleges, in substance, that at the date of making and approval of the agreement there were 985, individuals of the Delaware tribe who had been enrolled upon the register referred to in the agreement, being the list of Delawares who elect to remove to the "Indian country;" that the complainants stated herein were among the 985, enrolled as aforesaid; that 212, of the said 985, are now living and residing in the Cherokee nation; that 773, of the 985, have died since the making and approval of said agreement, leaving descendant heirs at law and personal representatives; that the individual complainants herein are among the children and heirs at law.

That allegation of the petition is substantially admitted—not noticed by the respondents.

The sixth paragraph of the petition avers that the Indians bought 157,600 acres under and by virtue of said agreement, and paid therefor the sum of $157,600, being at the rate of $1 per acre.

This allegation of the petition is denied by the respondents, in this, to wit: That the Delawares purchased only a life estate in 160 acres *per capita*.

Paragraph 11, avers, in substance, that the Delawares are entitled legally and equitably to 157,600 acres of land, which they have
525 selected and segregated from the other lands of the Cherokee nation. This allegation is denied, except as to the right of each individual Delaware registered, as aforesaid, now living may be entitled to 160 acres of land under the terms of the contract between the Delawares and Cherokee nation, and to receive in any further allotment not less than 160 acres of said lands. It is denied that said amount of land has been segregated as alleged, and denies the right or authority of the Delawares or any other persons to segregate or set apart that portion of land. As to the division of said land, it is alleged on the part of the defendants that no allotment can be made except to assign to each member of the Cherokee nation an equal portion thereof, reserving to the registered Delawares living at the time at least 160 acres.

It is substantially averred in the twelfth paragraph of the petition that in violation of the rights of the Delaware Indians the Cherokee nation has admitted other persons not Cherokees to share in the lands and funds of the Cherokee nation, and thereby diminished the share which the Delawares are entitled to have and receive in such lands and funds of the Cherokee nation, and for which they paid their money. To that allegation it is insisted by the defendants that whatever has been done has been in accordance with and by virtue of the sovereign powers of said nation, properly and legally exercised under the laws of the nation, and that the Delawares have no right to complain. It is insisted by the defendants that the court

has no right to determine how many persons have been so admitted to the Cherokee nation.

The thirteenth paragraph charges that persons have been admitted to share who were not entitled to share in the funds and lands of the nation. As to allegations of said paragraph as to the improper use of funds of said Cherokee nation, they are denied on the part of the respondents.

The issue as to the title and right to the 157,000 acres is contained in the allegations of the eleventh paragraph of the petition, which is in substance that the Delawares are legally and equitably entitled to the said land, and which they have selected and segregated, and that they are also entitled to share with the Cherokees *pro rata* in the division about to be made under the provisions of the act of Congress giving this court jurisdiction to determine the right of the Delawares in the lands and funds of the Cherokee nation. In other words, it is insisted that the claimants are to have in the division, first, the 157,000 acres allotted to them, and that after such allotment they are entitled to share in the division of the rest of the land and funds upon an equality of right with the citizens of the Cherokee nation.

The decision of that contention depends upon the construction of the agreement made on the 8th day of April, 1867, in ascertaining the extent of the estate or right which by the terms of that agreement was conveyed to the claimants. If an absolute fee-simple title was conveyed, or intended to be conveyed, having because of such title the descendible qualities of an estate absolute, then the Delawares own that amount of land in the distribution or allotment of the lands constituting a part of the national lands of the Cherokee nation.

In the decision of the question as to what the rights of the petitioners are in the lands and funds of the Cherokee nation we must determine what the legal effect of the agreement is on which they base their right; and if from the words of the instrument there is
an indication of the character of the estate intended to be
526 conveyed, there is no necessity to look beyond the words of the contract in ascertaining the rights of the parties. The obligation of each must be determined within the authority of the statute giving the court jurisdiction, because upon the authority of that statute the court is invested with whatever jurisdiction and power it exercises in its decision of the cause.

In the consideration of the matter, we must not lose sight of the fact that the agreement which constitutes the basis of this proceeding was made between two tribes or nations of Indians of equal power and capacity to contract, neither having as against the other superior facilities as contracting parties, but being on an absolute equality in dealing with and protecting their respective rights. They are both presumed to have known the full measure of their interests and of equal ability in dealing with the subject-matter about which they contracted.

The agreement in substance provides that the parties of the first

part, being the Cherokee nation, in consideration of certain payments and the fulfillment of certain conditions, agreed to sell to the Delaware Indians for their occupancy a quantity of land in the aggregate equal to 160 acres for each individual of the Delaware tribe, who was then enrolled upon a certain register made in 1867, being a list of the Delawares who had elected to remove to the "Indian country," to which list there might be added by the consent of the Delaware council the names of such other Delawares as might desire to be added thereto; that the selection of the lands might be made by said Delawares in any part of the Cherokee reservation east of a certain line, not already selected and in the possession of other parties, and in case the Cherokee lands should be thereafter allotted among the members of said nation it is agreed that the aggregate amount of land provided by the Delawares should include their improvements according to legal subdivisions, that is to say, 160 acres for each individual, shall be guaranteed to each Delaware incorporated by these articles into the Cherokee nation, nor shall the continued ownership and occupancy of said land by any Delaware so registered be interfered with in any manner without his consent; but the same shall be subject to conditions and restrictions as are by the laws of the nation imposed on citizens thereof.

And it is provided that nothing therein shall confer the right to alienate, convey, or dispose of such lands except in accordance with the constitution and laws of said Cherokee nation.

In the conclusion of the agreement it is provided, that on the fulfillment by the Delawares of the foregoing stipulation the members of the tribe registered as above provided shall become members of the Cherokee nation, with the same rights and immunities and the same participation (and no other) in the national funds as native Cherokees save as herein provided, and the children hereafter born of such Delawares so incorporated into the Cherokee nation shall in all respects be regarded as native Cherokees.

Confining ourselves to the terms of the agreement, we find that the estate is qualified by the word "occupancy," and nowhere in the instrument do we find the words of inheritance or perpetuity attached to the grant. Whatever may be said of the immediate parties to the instrument, as to their technical acquirements in the law in the designation and conveyance of estates or interests in the land, it must be assumed from the phraseology of the contract that it was drawn by some one having that technical knowledge of the law of conveyance which would enable the parties to express in apt
527 words of designation a fee simple or absolute title, if such was intended by the agreement. The terms "agree to sell" simply operate in the sale on such an estate as the parties intended to convey, as exemplified by the words used in the conveyance. The sale was to the Delawares for their "occupancy," thereby impressing a limitation on the estate contemplated by the parties.

It is insisted by the complainant that the grant expressed by the terms of the agreement conveys to the Delawares an absolute estate, a right without end or limitation in the estate granted, an estate of

inheritance descendible to the heirs or successor of the original grantees.

The court must in the construction of the words of the grant apply the rules of construction which from the earliest times down to the present have been adopted by courts in the measurement of estates from the covenants of the conveyances. If the grant is made to a person for his occupancy, can it be successfully maintained that by the most liberal construction of the grant that it extends beyond the period of his actual life? In the execution of the contract as to the land intended to be granted, the Cherokee nation was dealing with registered Indians and with those who might be registered in pursuance of the terms of the agreement. As to those born thereafter, express provision is made; they were in all respects regarded as native Cherokees. Can it be said, that being entitled only to the rights of native Cherokees, they have any interest in the lands granted to the Delawares beyond that which might result to them from the accretion of the 157,000 acres of land of the nation incident to the exhausted estate of the registered Delawares?

Does the sale and conveyance of the lands to the registered Indians inure to the benefit of those born thereafter, and who would by the principles of the common law succeed as heirs to the estate, having the qualities of an estate of inheritance? After the occupation of the registered Indians has ceased by their death or abandonment, is not the land relieved of the estate provided by the grant to the registered Indians, and must it not form a part of the common land of the nation as against unregistered Indians, they being placed on an equality with the native Cherokees?

The agreement must be considered in all its parts, and from it, as a whole, must be deduced the true interpretation of its provisions. Two classes of Indians were provided for by the terms of the agreement: First, registered, who constituted the basis of the grant of the 157,000 acres of land, and second, children of the registered Indians born after the date of the agreement.

As to the first, in the closing paragraphs of the contract it is in substance provided, that upon the fulfillment of the stipulations they were to become members of the Cherokee nation, with the same rights and immunities and the same participation in the national funds (and no other) as native Cherokees, save as hereinbefore provided, and the children hereafter born shall in all respects be regarded as native Cherokees.

As to the registered Indians, they were to be incorporated into the body politic on an equality with the native Cherokees in the national fund, superadded thereto the rights hereinbefore provided, but no reservation of that kind was made in behalf of the children of such registered Indians. They being a class distinct from the
528 registered Indians, were placed by the very terms of the agreement on a perfect equality with the native Cherokees. They are to be like unto them in all respects. There is a class of Indians, perhaps very insignificant in numbers, who are not provided for, and that is the Indian who was in being on the 8th of April, 1867,

and who was not on the register roll, and who did not within one month thereafter remove to the Indian country.

As to such Indians no provision is made, so that the classification becomes the registered Indians and children born after said date to said registered Indians.

It is not claimed by counsel for the petitioners that the agreement conveyed a technical title in fee simple, but that the Cherokees conveyed whatever title they had in the lands by the agreement of 1867, which operates in law as an estate equivalent to fee simple. It is said, "It is not important as between the complainants and the respondents whether this title was a fee simple or an Indian title of occupancy or some other title," but it is interesting to note that in *Holden v. Joy* (17 Wal., 211) the court uses the following significant language. We quote from the syllabus:"

"The Indian tribes are capable of taking as owners in fee simple lands by purchase where the United States in form, and for a valuable and adequate consideration, so sell them to them."

In order to maintain the theory of the respondents our attention is called to the case of the *Cherokee Nation v. Journeycake* (155 U. S., 213, 214, and 215), affirming the decision of this court (28 C. Cls. R., 281), in which it is alleged by counsel for the respondents that the Supreme Court decided that the Delawares did not take in fee under the contract of 1867.

It is contended on the part of the complainants, that whatever was said by the court in that case upon the question of the title of the Indians in and to the lands was not required by the issue in that case; and therefore the decision is not binding on this court in the present proceeding; that the matter is not *res judicata*, but open to the investigation and decision of this court. Conceding that the tenure by which the Delaware Indians held their lands under agreement was not properly within the purview of the issue in the case of *Journeycake* (*supra*) the court may still regard that decision in the light of an authority entitled to great weight as persuasive in the proper construction of the terms of the agreement.

In the *Journeycake case* (*supra*) it is said: "The individual Delawares took their homes in and remaining in the Cherokee reservation and as lands to be considered in any subsequent allotment in severalty among the members of the Cherokee nation * * * ."

"Neither should too much weight be given to the fact that the Delawares were to pay for their homes at the rate of $1 per acre, for by that purchase they acquired no title in fee simple."

"This Indian Territory was looked upon as the permanent home of the Indians. The Government was making the effort to bring within its limits all the Indians from all parts of the land, and it was not in the contemplation of the Government or of these contracting parties that at any early day these lands would be thrown open to settlement and sale, but rather the idea was that they were to be continued as their permanent place of abode. Consid-
529 ered as such, so long as each individual Indian, whether Delaware or Cherokee, had his particular tract for occupancy as a

home it was not unnatural or unequal that the vast body of the lands not thus specifically and personally appropriated should be treated as the common property of the nation, in respect to which all who were members thereof, whether by birth or adoption, should be entitled to equal rights and privileges."

In the agreement of the 8th of April, 1867 (*supra*), reference is made to the fifteenth article of the treaty between the United States and the Cherokee nation, made on the 11th of August, 1866, and the treaty of August 10, 1866, between the United States and the Delaware Indians, providing for the removal of the Delaware tribe to the Indian country south of Kansas, and a further proviso and agreement made by the United States to sell said tribe a tract of land being a part of a tract, the cession of which was then contemplated by the Cherokees, and that in view of such treaties the agreement was made which is the subject of contention in this proceeding.

It is insisted, that by the terms of the foregoing treaties the Delaware Indians were, by the conveyance contemplated, to receive in consideration of their payments an absolute title in the land, and that the same rights were to be given the Delawares in the agreement of 1867, such agreement having been made in lieu of the conveyance under the treaty of August, 1866.

The recitals in the agreement clearly show that it was the result of the failure to locate the Indians under those treaties which made the agreement of 1867 necessary, *but it does not necessarily follow* that the agreement is identical in legal effect.

The treaty of 1866, provided in substance that in case any tribe settling in the country should decide to preserve their tribal organization and maintain their laws and customs, they should have a district of country set off by metes and bounds equal to the 160 acres of land for each man, woman, and child of said tribe. But no such provision is found in the agreement or treaty of 1867. The terms of that agreement provide that the registered Indians shall become members of the Cherokee nation "with the same rights and immunities and the same participation (and no other) in the national funds as native Cherokees, save as hereinbefore provided."

It is said by the Supreme Court in the case of *Journeycake* (155 U. S. 205): "There is no provision for setting apart a distinct body of land in any portion of the reservation for the Delaware tribe, but the agreement is to sell them for their occupancy a quantity of land equal in the aggregate to 160 acres for each individual Delaware 'who may remove to the Indian country,' and the selection of the amount to be purchased by them may be made by said Delawares in any part of the Cherokee nation east of said line of 96° not already selected and in the possession of other parties."

It is stated by counsel for the complainant, that the Cherokee nation in defending the action of the Delawares in the litigation in the *Journeycake case* (*supra*) insisted that the Delawares had bought a definite number of acres; and that they were not entitled to participate in the distribution of the funds arising out of other lands.

It is sufficient answer to that position to say that such contention

was not sustained by the Supreme Court, and does not, therefore, work an estoppel on the contention of the respondent in this proceeding.

530 The recitals in the agreement of 1867 do not justify the conclusion or inference that under that agreement the parties intended to convey and receive by such conveyance the full extent of the rights which might have accrued to the grantees by virtue of the provision of the treaties of 1866.

It is expressly stated in the recitals of the agreement that no such cession of land was made to the United States, but "in lieu thereof terms were provided, as hereinbefore named, under which friendly Indians might be settled on their lands." It was because there had been a failure of the policy and plan contemplated and provided by the treaty of August 11, 1866, that a new agreement had to be made, and the result of that failure is the contract of 1867. The sixteenth section of the treaty, August, 1866, provides that Indians might settle west of the ninety-sixth degree, the land to be taken in compact form in quantities not exceeding 160 acres for each member of the tribe, the boundaries of the district to be distinctly marked and the land "to be conveyed in fee simple" to each of said tribes, to be held in common in severalty as the United States might determine.

It will be seen that the fifteenth and sixteenth sections of the treaty of August 11, 1866, make a distinction founded upon the settlement of the Indians either east or west of the ninety-sixth degree; east of the line it is grant of settlement and possession, but west of that line the grant is to be in fee simple. Recurring to that treaty as indicative of what the parties intended by the contract of 1867, it is worthy to note that the term "fee simple" is used as to one grant and omitted as to the other.

The Cherokee nation, in the policy of their national development, granted a fee simple in one part of their country as to the rights of Indian tribes which desired a change of their habitat, but to another depending on the location of the grant a different tenure of right or estate.

We have discussed the rights of the respective parties from the standpoint of what is apparent on the face of the contract, but it is one of the contentions of the complainants that the proof in the case establishes the fact that the Delaware Indians understood and believed at the time of the execution of the agreement that they were getting a right in the land coextensive with an absolute ownership, and that the land was to belong to the Delaware blood in perpetuity.

Much testimony has been taken on that subject, the large preponderance of the witnesses being Delawares, with a few Cherokees. Without a lengthy discussion of the question as to whether it is competent to attempt to establish the interpretation of the agreement by such testimony, it is sufficient to say that it would be a most dangerous precedent after such a lapse of time to permit a few parties, mostly on one side of the controversy, to give construction

to the agreement by their recollection of what they understood to be the extent of their rights at the time the agreement was executed.

As has been said, this is a litigation not between the United States and "an unlettered people," but between litigants of the same generic people, each having the same ability of comprehension and sagacity in the assertion and maintenance of their respective interests and rights.

Whatever of ambiguity there may be incident to the contract of the parties it arises on the face of the instrument and belongs
531 to that class denominated in the law as a patent, and therefore must be dealt with from the terms and words in which the parties have sought to exemplify their agreement.

If it were a latent ambiguity arising from collateral circumstances or matter, the condition would be subject to the introduction of parol evidence; but being patent if at all, the evidence offered of witnesses and papers is incompetent. (69 Ala., 140; 1 Mason, 9; 8 Lea, 499; Greenleaf's Evidence, secs. 300, 301.)

It is true, that in construing a contract, as in considering a statute, the court should look into the circumstances and conditions under which it was made or passed, but that is not in derogation of the rule that parol evidence is inadmissible to vary or even construe a contract, except to relieve the parties from the embarrassment of a latent ambiguity.

To maintain the contention in this particular on the part of the complainant our attention is called to the case of *United States v. Payne* (8 Fed. Rep.); *Worcester v. Georgia* (6 Pet., 515); *Miami County v. Breckenridge* (12 Kans.); *Kansas Indians* (5 Wall., 737); *Choctaw Nation v. United States* (119 U. S., 1).

We have most carefully considered those cases and others cited, and do not find in them a justification to permit the complainant to introduce the testimony in the record in order to show that some of the beneficiaries understood that the Indians were to get an estate absolute in the lands purchased, thereby giving construction and interpretation to the words of the agreement.

The question of the right of a dissatisfied portion of the Cherokee people represented by the Eastern band of Cherokees was before the Supreme Court in the case of that band against the United States, reported in 117 U. S., 288, and in that connection the Supreme Court said:

"While the treaty of 1846 was under negotiation one William H. Thomas appeared in Washington as representative of Cherokees in North Carolina and urged a recognition of their demands for the *per capita* money and the removal and subsistence money under articles 8 and 12 of the treaty of 1835. He had obtained a statement from one of the commissioners who negotiated that treaty on the part of the United States, from several respectable persons who were privy to the negotiations, and from some of the Cherokees who signed the treaty, as to the meaning which should be given to certain terms used in it; and we are referred to these documents as though they should have some influence upon the construction of

those terms. But it is too plain for controversy that they can not be used to control the language of the treaty or guide in its construction."

The law of real property is to be found in the law of the situs. The law of real property in the Cherokee country therefore is to be found in the constitution and laws of the Cherokee nation.

In the case of *Journeycake v. Cherokee Nation* (28 C. Cls. R., 281, 303) the court, by Chief Justice Nott, had reason to examine this law of property, and made the following abstract of it:

"The preamble of their constitution, September 6, 1839, like that of the Constitution of the United States, sets forth the general purpose of the instrument:

"'We, the people of the Cherokee nation in national con-
532 vention assembled, in order to establish justice, insure tranquillity, promote the common welfare, and to secure to ourselves and our posterity the blessings of freedom, acknowledging with humility and gratitude the goodness of the Sovereign Ruler of the Universe in permitting us so to do, and imploring His aid and guidance in its accomplishment, do ordain and establish this constitution for the government of the Cherokee nation.'

"The constitution then takes up (and it is most significant that it does so by its first article) the subject of paramount importance in the Indian mind—of more importance than the form of government, than the right of representation, than the right of trial by jury, or of *habeas corpus*, or of any of those principles of civil liberty which in the Anglo-Saxon mind are held supreme—the subject of their lands:

"'SEC. 2. The lands of the Cherokee nation shall remain common property; but the improvements made thereon, and in the possession of the citizens of the nation, are the exclusive and indefeasible property of the citizens, respectively, who made or may rightfully be in possession of them: *Provided*, That the citizens of the nation possessing exclusive and indefeasible right to their improvements, as expressed in this article, shall possess no right or power to dispose of their improvements in any manner whatever, to the United States, individual States, or to individual citizens thereof, and that whenever any citizen shall remove with his effects out of the limits of this nation, and become a citizen of any other government, all his rights and privileges as a citizens of this nation shall cease: *Provided, nevertheless*, That the national council shall have power to readmit, by law, to all the rights of citizenship any such person or persons who may at any time desire to return to the nation, on memorializing the national council for such readmission.

"'Moreover, the national council shall have power to adopt such laws and reglations as its wisdom may deem expedient and proper to prevent citizens from monopolizing improvements with a view of speculation.'

"The amendment of 1866 modifies the foregoing as follows:

"'SEC. 2. The lands of the Cherokee nation shall remain common property until the national council shall request the survey

and allotment of the same, in accordance with the provisions of article 20 of the treaty of 19th of July, 1866, between the United States and the Cherokee nation.'

"With these restrictive provisions should be considered the brief grant which the constitution contains of legislative power:

"'SEC. 14. The national council shall have power to make all laws and regulations which they shall deem necessary and proper for the good of the nation which shall not be contrary to this constitution.'

"The legislation of the Cherokees recognizes again and again the communal character of the seizin or occupancy of the land. It is not 'lawful for any citizen of the Cherokee nation to sell any farm or other improvement in said nation to any person other than to a *bona fide* citizen thereof;' nor 'to rent any farm or other improvement to any other person than a citizen of the Indian Territory.' (Revised Code, 1874, art. XXI, sec. 112, p. 234.) 'No person shall be permitted to settle or erect any improvement within one-fourth of a mile of a house, field, or other improvement of another citizen without his, her, or their consent, under the penalty of forfeiting such improvement and labor for the benefit of the original
533 settler; provided, it may be lawful, however, where a settler has a field one-half mile or more from his residence, and where there may be a spring or running water and timber, for another citizen to improve and settle one hundred yards from such field so situated.' (*Act 24th September*, 1839, *id.* p. 249.)

"The law regulating intermarriage with white men or foreigners provides that should a citizen of the United States or any foreign country 'become a citizen of the Cherokee nation by intermarriage,' and be left a widower, he shall continue to enjoy the rights of citizenship unless he shall marry a person 'having no rights of Cherokee citizenship by blood; in that case, all of his rights acquired under the provisions of this act shall cease.' (Revised Code, 1874, art. XV, sec. 74, p. 223.) If he abandons his wife, he 'shall thereby forfeit every right and privilege of citizenship' and shall 'be removed from the nation.' (Sec. 75.)"

With this system of land law before us, it is unreasonable that this agreement was intended to be in derogation of the system and contrary to the usages of occupants throughout the entire Indian country from the Atlantic to the Pacific. At the time the agreement was entered into the citizens of the Cherokee nation held no other right or interest in the land than the right of occupancy as communal owners. The common law did not prevail in the Cherokee country, and an estate in fee simple absolute was a thing utterly unknown. After the agreement was executed and went into effect there were Cherokees by blood having a right of occupancy, and Cherokees by adoption, the Delawares, having a right of occupancy. The only distinction that can be made between them was that the Cherokees bought their right of occupancy from the United States, and the Cherokees by adoption bought their right of occupancy from the Cherokee nation, and that is a distinction without a differ-

ence. The agreement must be construed with reference to the constitution and laws of the Cherokee nation.

The second subject-matter embraced in the statute of our jurisdiction is the fund belonging to the Cherokee nation. It is substantially averred in the twelfth paragraph of the petition that in violation of the rights of the Delawares the Cherokee nation has admitted other persons not Cherokees to share in the lands and funds of the nation, and thereby diminished the share which the claimants are entitled to receive of the funds of the nation. To the allegation of that paragraph the respondents answer that if any persons have been admitted as citizens of the nation it has been done in accordance with and by virtue of the sovereign power of the nation.

The complainants insist that they have a right to participate in the communal property of the Cherokee nation when the same comes to be divided or distributed in the ratio of one to thirteen and seventy-eight one-hundredths (1 to 13.78).

It is contended that while it is true the Supreme Court has said that the rights of property of the native Cherokees spring from citizenship, it does not necessarily follow that persons who are made citizens for the purpose of giving jurisdiction over them to the Cherokee national government have a right to participate in the common property.

The objection on the part of the complainants to the incorporation of citizens as alleged has reference more particularly to inter-
534 married citizens of the nation. It is contended that while they may be citizens in a political sense, they have no rights except those purely political.

To support the theory on the part of the complainants the attention of the court is called to article 5 of the Cherokee treaty of 1835 (7 Stat. L., 478), under which it is alleged the Cherokee nation has exercised its rights of self-government previous to the act of June 28, 1898.

We see by this article that—

"The United States hereby covenant and agree that the lands ceded to the Cherokee nation in the foregoing article shall, at no future time, without their consent be concluded (included) within the territorial limits or jurisdiction of any State or Territory, but they shall secure to the Cherokee nation a right by their national council to make and carry into effect all such laws as they may deem necessary for the government and protection of the persons and property within their own country belonging to their people or such persons as have connected themselves with them: *Provided*, That none of the laws of the Cherokee council shall be inconsistent with the Constitution and laws of the United States."

The latter part of the above quotation seems to recognize two classes of inhabitants, to wit, the people of the Cherokee nation, and such persons as have connected themselves with them, thus recognizing a condition of the native people of the nation and other persons, making no distinction between the two classes of persons.

In the case of the *Cherokee Nation v. Journeycake* (*supra*) it is said

in relation to the rights of the Delawares to participate in the funds arising from the sale of a portion of the land of the nation, "that the thirteen millions of acres, whether properly styled its 'common property' or its 'public domain,' belonged to the Cherokee nation as a nation is beyond dispute." The constitution of the Cherokee nation, under which the persons against whom the petitioners complain were introduced into the body politic, was adopted by the nation in 1866, and from that time until the present it has been in force as the constitution of the nation. It was in force at the time the contract was made by the Delawares. No effort has been made to invalidate it, and by the voluntary act of the Delawares they became a part of the nation at the time the provision of the constitution was in force under which from time to time the admission of persons has been allowed, and without a formal decision of its legality, it is the opinion of the court that the complainants are estopped from questioning the binding force of the constitution.

The Supreme Court in the case of the *Eastern Cherokee Indians v. Cherokee Nation* (117 U. S., 288) *is* decided in substance: "By treaties with the Cherokees the United States have recognized them as a distinct political community, so far as inhabitants, as to specify and require negotiations with them in that character."

Being clothed with the characteristics of a distinct political community, the nation must have incident to it the right and power to admit to citizenship such persons as it may desire, and, being admitted to citizenship, they partake of all the rights of a citizen in a political sense and an equality in common with the other
535 citizens in property and funds of the body politic. The communal property of the nation becomes theirs in the same sense that it is common to other citizens.

It is charged in substance in the fourteenth and fifteenth paragraphs of the bill that the Cherokee nation has improperly and without right used its communal funds and expended the same wastefully and lavishly, and thereby prevented the Delawares from receiving a just and proper share in the Cherokee funds.

This in substance is a charge of maladministration on the part of the political power of the nation in the discharge of its function, the consequences of which *is* common to the Cherokee people and the Delawares; but it is insisted that the whole of the amount thus improperly and fraudulently administered shall be charged against the Cherokee people and that the share of the Delawares shall be exempt from any diminution in consequence of such fraudulent use of the fund.

The allegation of the petition as to the improvident and unlawful use of the fund is denied by the respondent, and that the court is without power under the statute to make an investigation of the alleged fraudulent and improper use of the fund.

The question presented by the averment of the petition in respect to the manner in which the nation has discharged the functions of its legislative authority, or the executive authority of the nation, involves the entire administration of the political and executive de-

partments of the government from the time of the admission of the Delawares under the contract of 1867, to the bringing of this suit, during all of which time the complainants were a part of the body politic represented by such nation and it is not shown that the Delawares in any responsible form opposed in any way the policy or the measures adopted by the nation in its administration of the funds of the nation.

By the introduction and admission of the Delawares as a part of the Cherokee nation they became a part of the people of such nation and bound in common with the Cherokees by the political power of the nation in reference to the communal funds of the nation.

It would be extraordinary indeed if Congress intended that this court should, under the powers of the statute, examine into the acts of the nation so as to correct the mistaken policy of the nation or its alleged lavish expenditure of its funds.

In this connection it is proper to note the intervening petitions of the "Keetowah Society of the Cherokee Nation, being an organization of full-blooded Cherokees."

In the original petition to which the intervening petition is an adjunct the claim is made by, as they allege themselves, "full-blooded Cherokees."

The ground on which the Delawares base their claim is that as to them, because they are Delawares, there is a jurisdiction in this court to adjudge and decree redress against the alleged unlawful acts of the Cherokee nation. From what is said as to the rights of the Delawares it must follow that as to the claim of the intervenors there can be no possible jurisdiction in this court.

The statute recognizes two distinct parties which are clothed as against each other with the qualities of a litigant, to wit, the Delawares and Cherokees, and either party may become the complainant,
but there is no right given to any part of the Cherokee nation
536 to become as against the nation a complainant, and therefore as to the complainants in the intervening petition there is no jurisdiction in the court, and that petition is therefore dismissed. If they have any just cause to complain, they must seek some other jurisdiction clothed with the power to adjudicate their rights founded on their grievances.

This being a proceeding in equity, no findings of fact are required, and therefore none are made. The order of the court is that the petition of the complainants be dismissed.

VII.—*Decree.*

Thereafter the court, on February 2, 1903, made its decree of dismissal as follows:

537 In the Court of Claims.

THE DELAWARE INDIANS RESIDING IN THE CHEROKEE Nation, etc., Complainants,
against
THE CHEROKEE NATION, Defendants.
No. 21139.

At a Court of Claims held in the city of Washington, on the second day of February, A. D. 1903.

This cause coming on to be heard upon the briefs and arguments of counsel, and the same having been duly considered, it is by the court this day ordered, adjudged and decreed that the petition of the complainants filed herein be, and the same is hereby, dismissed.

BY THE COURT.

538 VIII.—*Application for and Allowance of Appeal.*

Thereafter the plaintiffs and complainants prayed for an appeal from said decree, which appeal was allowed on the 19th day of February, 1903, and is a- follows:

539 In the Court of Claims.

THE DELAWARE INDIANS RESIDING IN THE CHEROKEE Nation, as a Tribe and Individually; George Bullette, Henry Armstrong, John H. Secondyne, John Young, John Sarcoxie, Jr., Individual Delaware Indians Residing in the Cherokee Nation, and the Business Committee of Such Delaware Indians, John Bullette and Richard C. Adams, Individual Delaware Indians Residing in said Cherokee Nation and the Representatives of said Delaware Indians and said Business Committee, Suing on Behalf of Themselves and All Other Delaware Indians Now or Lately Residing in said Cherokee Nation and the Children, Descendants, Heirs-at-law, and Personal Representatives of All the Deceased Delaware Indians Whose Names Appear upon the Register of Delaware Indians Made in February, 1867, by John G. Pratt, the United States Indian Agent for the Delaware Indians, and on File in the Department of the Interior of the United States and Known as the "Delaware Register," Plaintiffs,
against
THE CHEROKEE NATION, Defendants.
No. 21139.

540 From the decree rendered in the above-entitled cause on the 2nd day of February, 1903, in favor of the defendants,

the above-named plaintiffs, by their attorney, Walter S. Logan, on this the 19th day of February, 1903, make application for and give notice of an appeal to the Supreme Court of the United States.

WALTER S. LOGAN,
Attorney for Plaintiffs and Appellants,
27 William Street, Borough of Manhattan,
City of New York.

The above appeal was allowed this 19th day of February, 1903, in open court.

Filed this 19th day of February, 1903.

541 IX.—*Stipulation of Counsel as to Record on Appeal.*

In the Court of Claims.

THE DELAWARE INDIANS, ETC., Plaintiffs,
against
THE CHEROKEE NATION, Defendants. } No. 21139.

It is hereby stipulated and agreed between the attorneys for the respective parties hereto that the foregoing record, as changed and amended, shall be the record to be forwarded by the clerk of the Court of Claims, as the record on appeal to the Supreme Court, subject to approval by the Court of Claims.

Dated March 18th 1903.

WALTER S. LOGAN,
Attorney for Plaintiffs & Appellants.
WM. T. HUTCHINGS,
Attorney for Defendants & Appellees.
J. J. H.

542 Court of Claims.

THE DELAWARE INDIANS RESIDING IN THE Cherokee Nation, etc., Complainants,
against
THE CHEROKEE NATION, Defendants. } No. 21139. In Equity.

I, John Randolph, assistant clerk of the Court of Claims, certify that the foregoing are true copies of the pleadings and—of the evidence in the above-entitled cause—of the opinion of the court—of the decree of the court—of the application of the complainants for, and the allowance of, appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims this 19th day of March A. D. 1903.

[Seal Court of Claims.]

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

Endorsed on cover: File No. 18871. Court of Claims. Term No. 240. The Delaware Indians Residing in the Cherokee Nation *et al.*, appellants, *vs.* The Cherokee Nation. Filed March 19, 1903. File No. 18871.